



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, OPB, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy dated July 9, 2013. In the second application the landlord seeks an order of possession pursuant to that Notice and pursuant to an alleged breach of an agreement with the landlord.

Issue(s) to be Decided

Does the relevant evidence show, on a balance of probabilities, that there is good cause for evicting the tenant for the reasons given or that there was a breach of some agreement justifying eviction?

Background, Evidence and Analysis

The rental unit is a bachelor apartment in a forty-five unit apartment building designed for use by seniors, the disabled and low income tenants. The tenancy started in November 2009. The current rent is \$328.00.

The eviction Notice alleges that the tenant or someone permitted on the property by him has either i) significantly interfered with or unreasonably disturbed another occupant or the landlord, or ii) has seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord, or iii) has put the landlord's property at significant risk. Proof of any of these acts could warrant eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

The landlord's representative Ms. M. refers to pages 36, 37, 56, 57, 58, 60, 62 and 67 of the filed materials, her testimony, the testimony of Mr. and Mrs. K., the building managers, the testimony of three other tenants in the building and the testimony of Mr. C. G. to support the Notice.

There appears to be no particular evidence to support the allegation that the tenant has breached “an agreement” with the landlord, but for the tenancy agreement itself.

The evidence of the landlord boils down to the allegations that the tenant was keeping an unlicensed vehicle in his parking spot contrary to the tenancy agreement (and conducting repairs on it), that he released automotive fluids into the sewer system on the property, that last winter he shovelled snow onto Mrs. F.’s parking stall, that he was using the balcony and fire escape and that he sprayed water into another tenant’s room.

The tenant was keeping an unlicensed automobile in his parking spot (though it is now gone). The tenancy agreement prohibits such conduct and I find the tenant was in breach of the tenancy agreement by doing so. However, the term prohibiting the parking of unlicensed vehicles is not a “material term” of the tenancy agreement, that is, it is not a term so fundamental to the relationship that both sides would agree that a breach would end the tenancy. Had the conduct continued, the landlord might well have asked for an arbitrator’s order that the tenant remove the vehicle or that the tenant refrain from bringing another unlicensed vehicle onto the property. Subsequent breach of that arbitrator’s order could then have formed the basis of an eviction under s. 47(1)(l) of the *Act*.

The evidence regarding automotive liquids discharge came from another tenant, Mr. B. He saw the tenant washing his car and was of the opinion that brake fluid, anti freeze, gasoline and oil were running down into the sewer drain system. Leaving aside the question of whether such an action comes within any of the three allegations found in the Notice to End Tenancy, I have significant doubt that all of these liquids would be coming out of a car at the same time or that any person would be able to identify each of them as they washed away. The evidence is equally consonant with normal runoff from a parking space. The allegation has not been proved on a balance of probabilities.

The evidence of Ms. F. regarding the piling of snow onto her parking stall is worrisome. She indicates that the tenant confessed to her that he did it intentionally. She feels he was attempting to “manipulate” her. She now has another parking stall, away from the tenant’s stall. The conduct alleged appears to be consistent with the general unpleasantness the tenant emanates to the landlord’s witnesses and the site managers. At the same time, this incident took place last winter. There does not appear to have been any formal complaint or any investigation at that time nor any contact with the tenant about it in an effort to obtain verification. The lack of investigation leaves open the question of how significant the incident was. For example, how much snow? A shovel full? A wheelbarrow full? And where was it? On the boundary between the two

stalls? In the middle of Ms. F.'s stall? On the evidence tendered, I do not find the conduct has been proven significant enough to warrant eviction.

There is an indication from a neighbouring tenant that the subject tenant frequently uses his balcony and a fire exit as route of egress and ingress to his apartment. It has not been shown that to do so is a violation of some kind or that it is threatening the landlord's lawful interests or is significantly disturbing anyone. I reject this ground.

There is evidence that the tenant sprayed water from a hose into Mr. B.'s suite. It is not clear from Mr. B.'s testimony that the incident was intentional or accidental. In any event, the incident took place in August 2012; over one year ago. Had it been of such significance as to warrant eviction it is fair to assume it would have been the subject of further inquiry and an eviction Notice a year ago. The fact that it has not leads one to the conclusion that it was a relatively insignificant event at the time and that no one was significantly interfered with or unreasonably disturbed by it.

There were other claims that seemed to me to have no bearing on the eviction Notice in question. For example, that the tenant once saw spiders that others did not later see or that he refuses to verbally communicate with staff or that he is irritable or that some people are made uncomfortable when talking to him.

Additionally, there was reference to the "crime free" addendum to the tenancy agreement and an allusion that the tenant was in violation of the addendum because he was guilty of intimidation and aggression. Frankly, there was no evidence sufficient to support even the speculation that the tenant was intentionally intimidating anyone or that he was aggressive but for a "he said/she said" altercation he had with the site manager Mr. K. on one occasion.

Finally, and as a result of my question, the landlord indicated the tenant had disconnected a smoke detector in his suite. The fact that the landlord did not present evidence of this when given the opportunity to do so indicates to me that the landlord did not consider the tenant's actions to "put the landlord's property at significant risk" and so I say no more about the matter, but that should such conduct come before me again and should a landlord make such a claim, I would have little hesitation in concluding that the disconnection of a smoke detector or fire alarm of any kind does "put the landlord's property at significant risk."

Conclusion

The tenant's application is allowed. The one month Notice to End Tenancy dated July 9, 2013 is hereby cancelled.

The landlord's application is dismissed.

It should be noted that at hearing the landlord attempted to adduce evidence of grounds for eviction that occurred after issuance of the Notice in question. As explained at hearing, only facts arising up to the issuance of the Notice can be considered in deciding whether the Notice is valid or not. The landlord is free to issue another Notice if it considers that conduct subsequent to the Notice gives additional grounds for eviction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 23, 2013

Residential Tenancy Branch

