



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDEN APTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

An agent for the Landlord and the building manager who had been served documents appeared for the hearing. The Tenant also appeared for the hearing. No issues were raised by any of the parties with regards to the service of the hearing documents and evidence under the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the start of the hearing, the Landlord made an oral request for an Order of Possession for the rental suite.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy of a suite containing a bathroom started on August 1, 2011 on a month to month basis. The suite is located in a multi-level building and each level has access to shared common kitchen facilities. The Landlord retains a security deposit from the Tenant in the amount of \$187.50. Rent is currently payable by the Tenant in the amount of \$375.00 on the first day of each month.

The Landlord personally served the Tenant with the Notice which the Tenant acknowledged receipt of on January 31, 2014. The Notice details the expected date of vacancy as January 30, 2014 and the reason for ending the tenancy is because the Tenant has seriously jeopardised the health and safety or lawful right of another occupant or the landlord. The Notice also provides for three other reasons: the tenant has engaged in an illegal activity that has, or is likely to:

- Damage the Landlord's property
- Adversely affect the quiet enjoyment, security, safety or lawful right of the occupant or the Landlord
- jeopardised the health and safety or lawful right of another occupant or the landlord

The Landlord's agent presented the following evidence that led up to the Tenant being served the Notice.

The building manager testified that each floor of the building has its own shared kitchen and it is understood by the residents that they are to use the kitchen facilities on their respective level; however the Tenant who resides on the 2nd floor has been using the main floor kitchen facilities. The building manager testified that on January 29, 2013 he discovered the Tenant in the main floor kitchen stealing food from the cupboards by stuffing it into plastic bags. The building manager claims the Tenant was in possession of 2 bottles of paint thinner which he was using to clean the kitchen amongst food items. An altercation ensued between the building manager and the Tenant and the police were called by the Tenant; however, no further action was taken by police.

The Tenant denied that he was stealing food from the kitchen and testified that he uses the external door the kitchen on the main door to dispose of his garbage. While there the Tenant explained that he was removing paint thinners and plastic bags because together, they both posed a fire hazard. The Tenant testified that the building manager attacked him and he called the police because of this altercation but no action was taken.

The Landlord testified that the Tenant has the ability to dispose of garbage in 3 other locations in the building and sees no reason as to why the Tenant has to use the main floor kitchen exit to do this. The Tenant testified that he does not use the other exits of the building to dispose of his garbage because he does not like to disturb other tenants who reside close by to these exits.

The Landlord testified that the Tenant had been caught putting weather stripping on an external door to the same kitchen referred to above and confirmed that the Tenant was not asked to do this or did not get permission from the building manager to do such repairs.

The Tenant testified that the building manager is not carrying out adequate repairs to the building. On this occasion, the Tenant noticed that there was cold air coming into the main floor kitchen and decided that he would weather proof this. When the Tenant was questioned whether he had permission to do this, the Tenant stated that he did not but was trying to be helpful.

The Landlord explained that the small gap the Tenant was weather stripping was very thin and was the result of recent renovations that had been done to the building; the repair was going to be completed in due course. The Landlord testified however, that the Tenant again had no business being in the main floor kitchen or making such repairs and purporting to be the building manager to other residents.

The building manager testified that the Tenant had spray painted graffiti on the front door of his rental suite. The Landlord referred to photographs which the building manager had taken on discovery of the vandalism. The photo indicates the words "6-alpha" and "Sick Bay". The building manager testified that the Tenant painted the door with a different colour in order to cover the graffiti after he became aware that the Landlord had been alerted to the damage.

The Tenant admitted to the graffiti on the door explaining that he wanted to make his door more visible to police when they often attended the building to deal with his complaints about the building manager. The Tenant explained that the "6-Aplha" referred to his door number and the "Sick-Bay" was a bit of humour.

The Landlord provided some police records of incidents where the Tenant had called police. The Landlord testified that the Tenant often makes malicious and unfounded allegations against the building staff to the police who often attend the building.

The Landlord testified to items that the Tenant was often leaving in the hallways outside his rental suite which were creating a fire safety hazard to other residents in the building. The Landlord provided a photograph which indicates a new toilet and garbage bags on the floor of the hallway.

The Tenant admitted to the items shown in the photographs outside of his rental suite, stating that he often leaves recycling material there temporarily to dispose of later. In relation to the toilet, the Tenant testified that he was attempting to replace his own toilet in this rental suite but was unable to do so. When the Tenant was asked whether he had permission to make repairs to the rental suite, the Tenant stated that he had done plumbing jobs before in the building so he did not think this was a problem.

The Landlord also testified that the Tenant had changed the combination lock on the door of the rental suite and the Landlord has not been provided with access to the rental suite for emergency purposes by the Tenant. The Landlord explained that a dispute resolution hearing with the Residential Tenancy Branch took place in 2012 where the Tenant was ordered to give a key to his rental suite to the Landlord. The Landlord testified that the Tenant did provide him with a key after the hearing but recently, the Tenant has changed the locks again and failed to provide a key to the Landlord. A photograph was provided of the combination lock for the Tenant's rental suite.

The Tenant stated that he has not provided the Landlords with access to his suite because of the continual harassment by the Landlord and the building manager for which he had undertaken civil action. The Tenant stated that he does not want the Landlord entering his suite because of this harassment.

The Landlord explained that the relationship with the Tenant and the building manager is strained and volatile with the Tenant continuing to call police on a regular basis, only for the police to attend who take no further action because the allegations are baseless.

Analysis

Having examined the Notice, I find that the content and the manner in which it was served to the Tenant, complied with the Act. I find that the Tenant disputed the Notice within the 10 day time limit afforded under Section 47(4) of the Act, and Section 25(3) of the Interpretation Act which allows for an additional business day if the 10th day of making the Application falls on a weekend or a holiday. In addition, the Landlord and Tenant agreed that the Tenant is required to pay rent on the first day of the month. As the evidence indicates that the Notice dated January 30, 2014 was served to the Tenant

on January 31, 2013, the effective date on vacancy on the Notice is corrected to February 28, 2014 pursuant to Section 53 of the Act

When a Landlord issues a Tenant with a Notice for the reasons documented above, the Landlord must prove on the balance of probabilities that at least one of the reasons provided on Notice is sufficient grounds to end the tenancy.

In my analysis of the evidence presented by the Landlord, I find the Tenant provided a plausible explanation as to why he had the paint thinner and garbage bags on his person in the kitchen, the reason being to remove combustible materials from the kitchen to prevent a fire; this is supported by the fact that the Tenant has a propensity to do repairs to the building, even though these were done without authorisation. Therefore, the Landlord has failed to provide sufficient evidence to show that the Tenant was stealing food from the main floor kitchen and therefore engaging in an illegal activity.

However, the Tenant admitted to painting the graffiti on his own door and that he did this to make it more visible to the police in terms of identifying his rental suite door number. However, the Tenant acknowledged that he wrote "Sick Bay" on his door for humour but painted over this the next day. I find that this is not an acceptable act to undertake in a tenancy and that this vandalism was an illegal activity that damaged the Landlord's property.

In addition, I also accept the Landlord's evidence and the Tenant's acknowledgment that he left items, such as a toilet and recycling materials, outside his rental suite to dispose of later on. Tenant's living in multi-unit dwellings are required to co-habit with respect for their neighbours peaceful and quiet enjoyment and conform to the regulations of the building. As a result, I accept the Landlord's evidence that by leaving such items in the shared common hallways of the building created a potential hazard in the event of a fire evacuation of the building.

The Landlord claimed that the Tenant is purporting to be the building manager and is going around making repairs to the building which he is not authorised to do. The Tenant testified that he is making repairs to the building in good faith as the Landlord is overwhelmed. This was denied by the Landlord and the building manager. Section 32(3) of the Act only allows a Tenant to make repairs to the common areas that is caused by the actions or neglect of a Tenant. In this case, the repairs being done, such as the weatherproofing, are not due to the Tenant's actions or neglect. As a result, I find that the Tenant acted against the Act in doing repairs to the common areas and therefore jeopardising the lawful right or interest of the Landlord.

Section 31(3) provides that a Tenant must not change a lock or other means that gives access to his or her rental suite unless the Landlord agrees to do so in writing. In this case, I accept the evidence of the Landlord that the Tenant changed the locks to his rental suite which would impede the Landlord's right of entry into the property for emergency purposes.

Based on the foregoing, I find that the combined evidence in this case, does not disclose sufficient grounds for the Notice to be canceled. Therefore, the Notice is upheld.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

As the Landlord made an oral request, I grant the Landlord an Order of Possession. As the effective date of vacancy on the Notice (February 28, 2014), has passed, the order is effective two days after service on the Tenant.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application in its entirety without leave to re-apply.

The Landlord is granted an Order of Possession which is effective 2 days after service on the Tenant. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court as an order of that court.

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: March 31, 2014

Residential Tenancy Branch

