



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have sufficient cause to end this tenancy?

Background and Evidence

The month-to-month tenancy commenced May 1, 1998. At that time the tenant paid a security deposit of \$185.00. The current monthly rent is \$417.00 payable on the first day of the month. The rental unit is a bachelor suite in a 17 story concrete building.

The tenant is 63 years old and has come health problems which were exacerbated when the car in which she was a passenger was involved with a head on collision on May 4, 2014.

- On June 3 the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were that the tenant has:
- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at significant risk.

The background to the issuance of this notice is as follows.

On December 5, 2013 the tenant went to the landlord's office to talk to them about an accounting issue. The landlord acknowledged that they had made an error. Two witnesses testified that the tenant was very drunk and belligerent on this occasion. At one point the tenant said she was too hot and started to remove her clothes. The whole

episode lasted about 25 minutes. The witnesses testified that they found the whole episode very upsetting and frightening. In fact, the receptionist had to go home for a few hours.

On April 25, 2014, at mid-afternoon, the smoke alarms went off in the building. The fire department responded and the whole building was evacuated. Ultimately the source of the smoke was discovered to be burning toast in the tenant's toaster.

The relevant portions of the fire department incident report states:

"The smoke was confirmed to be from burnt toast in Unit . . . I spoke to the tenant . . . who was experiencing difficulty talking. She told me that she had been drinking and did not want any assistance from BCAS. The Manager of the Property . . . arrived on scene and I apprised [her] of the situation. [She] attempted to speak to [the tenant] but to no avail . . . There was not any damage due to the fire. Unit . . . was cleared of smoke via electric blower. [Tenant] returned to her apartment."

"Recon 1 made entry, found occupant asleep, woke occupant and told to leave the building. Recon 1 found that the cause of the smoke was from burnt toast. No fire no damage to the building. . . Once smoke was cleared, occupants were allowed back in."

On April 28 the landlord gave the tenant a caution notice. It stated:

"We received a call from the fire department that smoke was in the hallways caused by intoxication and negligence while you were cooking in your unit. You have caused a safety concern for other tenants and the building, govern yourself accordingly and respect your surroundings."

On May 31 there was another incident involving the tenant. One of the landlord's staff was doing a move-in with a new tenants. They were having some difficulty getting their furniture into the elevator when the tenant appeared. The tenant was very intoxicated and proceeded to create a disturbance with the new tenants. When the staff person told her to leave, she refused. When he told her that he would have her removed if she did not leave she told him to "F... off". But when she saw him dialling his telephone she left, still muttering. According to the staff person involved the whole episode lasted about fifteen minutes.

As part of its evidence the landlord filed a copy of a computer service record. They said the tenant had refused the repairmen entry and was drunk when she did so. The computer record does not show the date on which entry was refused but it does show

that the repairman went back to the unit on November 20 but no one was home so he left a note on the door. It says “no one home on Nov 21, left a message”; “called nov 25, 27”; “tried Dec 3”; and finally “Repaired Dec 4”. The landlords testified that this was just one example of the difficulty they have had with the tenant.

The landlord has inspected the rental unit for various reasons on May 9, May 14, June 9 and July 10 without any difficulty.

The tenant’s evidence was very brief – basically monosyllabic. She did say that she had not refused entry to anybody.

Her sister-in-law argued that the reason the tenant had difficulty speaking on April 25 was because she had had dental surgery on April 16. She also stated that the tenant does not have a telephone and questioned how anyone could leave her a message. She also pointed out that no damage was done as a result of the burning toast.

Neither the tenant nor her sister-in-law admitted that the tenant’s intoxication was a factor in any of the incidents described by the landlord.

Analysis

On an application such as this the onus is on the landlord to prove, on a balance of probabilities, that it has cause within the meaning of the *Residential Tenancy Act* for ending this tenancy.

Usually these cases are pretty clear cut – either the landlord has an overwhelming amount of evidence against the tenant or it has barely any. This case is really on the line.

The tenant’s behaviour did expose the other residents of the building to a significant risk on one occasion. The fact the burned toast did not lead to a bigger fire is the result of the fire alarm system and the fire department’s response to it rather than any vigilance on the part of the tenant.

The tenant’s behaviour did unreasonably disturb the landlord’s staff on December 3 and May 31 and did unreasonably disturb another tenant on May 31.

I find that on all three occasions the tenant was highly intoxicated.

I have not included the allegation that the tenant was drunk when she refused entry to the repairman in my considerations as there is no direct evidence of this fact – only the hearsay evidence of the regional manager.

I have struggled with the question of whether these incidents have been severe enough or frequent enough or close enough together in time to end a sixteen year tenancy, particularly when there was no evidence of any problems until last winter.

Finally, I have concluded that the fact that the landlord's evidence has left me in doubt is really the proof that their evidence did not tip the balance of probabilities in its favour. Accordingly, I find that the 1 Month Notice to End Tenancy for Cause dated June 3, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the Residential Tenancy Act.

However, the tenant is advised that any repeat of this behaviour is not acceptable. She is also advised that if there are other incidents of a similar nature in the future, the landlord may serve a new 1 Month Notice to End Tenancy for Cause on her and all this history will be considered at any future hearing.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated June 3, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the Residential Tenancy Act.

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 15, 2014

Residential Tenancy Branch

