



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prov. Rental Housing Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

At the end of the hearing just as I was summing up, I lost contact with the parties, heard the busy signal and then the automated voice saying "I'm sorry, all circuits are busy". I hung up and after a couple of attempts was able to rejoin conference call. The landlord was still on the line. He advised that the tenant had just hung up. I asked the landlord to explain to the tenant that there had been a technological problem and that his copy of the decision would be mailed to his home address. The landlord undertook to do that.

Issue(s) to be Decided

Does the landlord have cause, within the meaning of the legislation, to end this tenancy?

Background and Evidence

This month-to-month tenancy commenced November 15, 2014. The monthly rent of \$800.00 is due on the first day of the month. The tenant paid a security deposit of \$400.00.

The rental unit is one of 35 apartments located in a three story wood frame building. There are two such buildings in this complex. The buildings were constructed in the 1970s but a \$2.5 million renovation has just been completed. This renovation included new windows, siding, roofs, balconies, etc. The tenant is the first person to occupy this unit since it was renovated. The unit is located on the third story of the building.

The landlord is still resolving some deficiencies with the contractor. One of the problems has been defective smoke detectors to be placed inside each unit. Currently

there are no smoke detectors in the tenant's unit. The landlord testified that they are putting pressure on the contractor to rectify this deficiency as soon as possible.

The caretaker testified that each unit has, or will have, a hard wired smoke detector. These detectors will not set off the detectors located in the hallways. There are separate heat and smoke detectors in the hallways and common areas. If these are set off, bells ring. When someone in the building hears the bells they must call the fire department.

The building does not have sprinklers.

The caretaker testified that he lives in the other building of this complex. At approximately 5:00 am on December 28 someone called him to report that the fire alarms in the other building were ringing. He rushed to the building and shortly after he arrived the fire department arrived. He silenced the fire alarms and then went to the hallway outside the tenant's unit. He heard the tenant tell the firemen that he had gone to the bathroom and left a knife against a hot burner. He did not see into the rental unit. He thought that the tenant was probably inebriated at that time.

The tenant testified that he had gotten up early and was making himself breakfast. When he went to the bathroom the knife handle, which is polyurethane, started to smoke. He said he was only in the bathroom for a very brief time. When he saw the smoke he panicked and opened the door to the hallway as well as the windows of his unit. That's when the hallway smoke detectors were initiated.

The tenant testified that there was not that much smoke; that it was the smell that was bad; and that the incident was not that serious. He also testified that he felt very bad about the disturbance and he had apologized to all of his neighbours.

The tenant stated that when he gets inebriated he stays away from the rental unit.

The next day the captain of the fire department hand delivered a letter to the landlord. The landlord testified that in all his years as a property manager this was the first hand delivered communication he had ever received from the fire department.

The captain expressed concerns about the tenant's condition at the time of the incident and the potential for damage that could have resulted.

The captain also referred to an incident that occurred at the rental unit on December 20. There had been a domestic assault to which the fire department, the police and the

ambulance all attended. The landlord was very clear that the December 20 incident was not the reason why the notice to end tenancy was issued.

The captain gave the landlord a letter and asked that it be distributed to all residents. The letter starts: "On December 28, 2014 at 5:50 am, the fire alarm was activated in your building which was caused by combustible too close to the stove top element. Although damage was minimal and the smoke was quickly cleared by fire crews, the potential of this incident being worse was likely.", and goes on to set out safety procedures to be followed.

There was a long discussion in the hearing about whether the landlord had given the tenant this document. At first the tenant said he had not received anything from the landlord but then acknowledged that the caretaker had tried to give him something from the fire department but he refused to accept it.

On December 30 the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were:

Tenant or a person permitted on the property by 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 landlord testified that some of the residents of this building are high risk individuals with either physical or mental disabilities. For this reason the landlord feels they have a higher standard of responsibility.

Analysis

Although the actual damage incurred by this incident was minimal it was only a few seconds away from being a serious fire. Given the structure of this building, the lack of sprinklers, and the early hour, the consequences of a fire could have been very serious.

Having thought about the evidence carefully two aspects of the tenant's testimony are particularly troubling:

- His characterization of the event as not that serious.
- His refusal to accept the safety information from the fire department.

I find that the tenant's behaviour has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

Accordingly, I find that the landlord does have cause within the meaning of the Residential Tenancy Act for ending this tenancy and that the 1 Month Notice to End Tenancy dated December 30, 2015, is valid. The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. Pursuant to section 55(1) the landlord is granted an order of possession effective two days after service.

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: February 13, 2015

Residential Tenancy Branch

