



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IVAN HOE HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

cnc,opc,

Introduction

The tenant requests that a one month Notice to End Tenancy, dated January 23, 2015, be cancelled. The landlord requests an Order of Possession.

Issue(s) to be decided

1. Is the Notice valid to end the tenancy, or should it be cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began July 29, 2010. Monthly rent is \$500.00, due on the 12th day of each month. On January 23, 2015, the tenant was personally handed a One Month Notice to End Tenancy.

Witness #1 provided a written statement, and was present at the hearing to testify. He is a tenant on the same floor of the hotel as the Tenant. He has personally witnessed bizarre behaviour from the Tenant since early 2013. The Tenant intentionally leaves the water running in the shower and in the bathroom on a daily basis. He booby traps the toilets by balling up toilet paper and putting it in the toilet, doing his business, and then putting further toilet paper into the toilet. He does not flush the toilet, and when the next person does, the toilet plugs and overflows. When he confronted the tenant about leaving the water on, he was told to f--- off, and the Tenant pulled out his camera and began filming him and stating that he had threatened to kill the Tenant. The Tenant's allegations of being beaten are outrageous lies.

Witness # 2 provided a written statement, and was present at the hearing to testify. He works the front desk at night, and receives about 5 complaints every month about the Tenant. He has been accused of personally assaulting the Tenant, when that has not occurred. The tenant regularly puts large snowball sized balls of toilet paper into the toilets. Witness #2 has heard the Tenant yell that someone is killing him, when there is no one else around. On one occasion, the Tenant was in the communal shower, and after he left the Witness entered and found a large pile of fresh fecal matter in the shower. The witness has observed the tenant not permitting other guests to use the kitchen on the 5th floor. He has seen the Tenant make slashing gestures across his throat towards him.

The landlord testified that Witness #2 is not an employee at the hotel, and that he is one of their best tenants in the building. He testified that the Tenant was also a good tenant until about two years ago when the Tenant began having serious medical issues and receiving medication.

The Tenant acknowledges that his health has deteriorated significantly in the past 3 years, and he is now disabled and on significant medication. He contends the Landlord preaches hate, and has no basis to end the tenancy. He denies plugging any toilets, leaving water running, or defecating in the shower. He denies all other allegations by the Landlord and the Witnesses.

The Tenant's advocate submits the Notice has not been given in good faith, as evidences by the landlord having given previous Notices for essentially the same reasons, and both having been cancelled by past arbitrators. The current Notice was provided on the very day of a previous hearing. The Landlord has not provided digital camera support, or other support of the oral and written statements. The Landlord is controlling the witnesses, who are not providing independent and true testimony. No photographs of actual damage to the premises have been provided. Statements or complaints by other guests to the night manager are hearsay evidence. No one living in the hotel would leave feces in the dwelling where they reside.

The Landlord submits that the flooding of the toilets is a health hazard, and the poor conduct of the Tenant unreasonably disturbs others at the premises. The eviction is not one that is personal or vindictive. On the contrary, he has worked with the Tenant to correct his poor conduct. The Notices were not upheld in the previous hearings because his oral testimony was not found to be sufficient to prove that there was cause to end the tenancy.

Analysis

Section 47 of the Residential Tenancy Act deals with the issues related to landlords' notices given to end the tenancy for cause (as is the case in this dispute). Subsection 47(4) provides that the time limit to dispute such notice is within 10 days after the date the tenant receives the notice. In this case the notice was properly served and was received by the Tenant on January 23, 2015. Given that the rental periods begin on the 12 day of each month, the effective of the end of the tenancy (should the cause alleged be found proven) must cover a full rental period, which in this case is March 11, 2015 (one month following the rental period commencing February 12, 2015). The Notice is amended accordingly.

The Tenant submits that the prior issuance of Notices for the same cause, demonstrate bad faith, and the onus to demonstrate that there is no bad faith lies with the Landlord. While it is true that there were two prior Notices given for the same reason as the present Notice, and both were cancelled, I have had opportunity to review the reasons for those decisions, which I find consistent with the Landlord's explanation. I do not find that a previous failure of the Landlord to present witness statements, or have witnesses present to testify in support of there being cause to end the tenancy, is a demonstration of bad faith in the giving of a further notice. It is, rather, a demonstration of a Landlord failing to provide sufficient proof to an arbitrator of cause to end the tenancy, in a case where the landlord had no personal knowledge to support that cause.

If I were to accept that the Notice had not been given in good faith, it would follow that I also accept the Tenant's contention that the Landlord and the witnesses are fraudulently conspiring in an elaborate scheme to evict him. I find no basis upon which to make such a finding. I note that the Landlord was candid and forthright in his admission that he has not personally witnessed the conduct of the tenant in terms of making threats, plugging toilets, preventing others from using the kitchen, or defecating in the shower. The Landlord was also candid that the Tenant was a good tenant until about two years ago, a time that corresponds with the dramatic change in the tenant's health. On the evidence I find it far more probable that the Tenant's testimony is unreliable, than that the Landlord, his night manager, and a different tenant in the unit have concocted a scheme in bad faith to evict the Tenant.

I accept and prefer the testimony of the witnesses over that of the Tenant. I find this testimony is sufficient to demonstrate that the Landlord has sufficient cause to end the tenancy. In particular, I find that the conduct of the Tenant, (including his plugging of toilets, leaving water running, defecating in the shower, making slashing gestures across his throat, and his use of derogatory language) over a significant period of time, all combined to unreasonably disturb other occupants and the Landlord.

The application by the Tenant to cancel the Notice is dismissed. The tenancy shall therefore end in accordance with the Notice, on March 11, 2015. The landlord is issued an Order of Possession accordingly.

Conclusion

The tenant's application is dismissed. The landlord is granted an Order of Possession, effective March 11, 2015.

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 11, 2015

Residential Tenancy Branch

