



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Karyn Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNDC, CNC, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause and a monetary order. The other was the tenant's application to set aside the Notice to End Tenancy. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Does the landlord have cause, within the meaning of the legislation, to end this tenancy?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced November 1, 2003. The monthly rent, which is due on the first day of the month, is currently \$490.00.

The rental unit is a bachelor apartment located on the second floor of three story building, next to the elevator. There are 29 units in the building, all rented.

The building dates from 1971. Both the landlord and the tenant described the building as well maintained.

The tenant is 62 years old and has been on a CPP disability pension for 21 years. He says he suffers from cognitive issues and depression, as well as physical problems. He described himself as socially isolated and without family.

The landlords testified that they have a maintenance contract with one of the large elevator maintenance companies and that this contract has been in place for over ten years. The elevator is inspected/serviced monthly. There has never been a problem with the elevator until this past year. Last summer someone reported a fire smell in the elevator. The fire department attend and found no problem. The maintenance company inspected the elevator and did not find a problem. In September 2014

someone was stuck in the elevator and called 911. The police responded to the call. According to the male landlord when the police opened the door the woman in the elevator ran away. The maintenance company inspected the elevator but did not find a problem. The male landlord testified that the tenant, the female witness and one other person reported issues with the elevator in the fall. The maintenance company attended on each occasion but never found a problem.

The landlords testified that beside each elevator is a note that says in case of emergency call 911.

The tenant testified that there have been times when the elevator door sticks but once the elevator is cleaned the situation is remedied. He also said that occasionally the lights in the elevator shut off.

Both the tenant and the female witness testified that the maintenance company is in the building regularly.

On the morning of January 2, 2015 the female witness was in the elevator when it got stuck. As she described it she "freaked out" and continued to do so until she was removed from the elevator. She testified that she had never been stuck in an elevator before and it was the worst feeling. She testified that she pushed the emergency buttons but nothing happened.

Another resident of the building heard her screams and called to her. She asked him to go get the tenant, who is a friend of hers.

The tenant called the male landlord. The male landlord told him he was about 45 minutes away. When the tenant told the female witness this she screamed to the tenant that he had to get her out. The tenant ran to the first and third floors to see if anyone had propped the doors open. Then he went to his apartment, picked up a ten inch wood file, and used it to pry open the elevator doors wide enough to get his fingers in. Then he pulled open the doors. When the doors opened the car was about eight inches below the hallway floor and only the emergency light was on. He helped the very shaken woman out of the elevator. Her boyfriend arrived at this time and took her back to their apartment on the third floor. The tenant went to his apartment and stayed there.

The female witness testified that while the episode seemed like an hour it was probably less than ten minutes between when she got into the elevator and when she got out.

Meanwhile, the male landlord called an electrician who was at the building in seven minutes. By then, everything was over. The male landlord arrived within thirty minutes of receiving the tenant's call.

He had also called the maintenance company. Their invoice, which is dated January 12, says they received the call from the male landlord at 11:33 am. The invoice says: "We checked the operation of the landing door lift rod and checked the operation of the landlord door interlock hook. Upon leaving at 7:53 PM we left the elevator out of service. We returned on 01-06-2015 at 2:05Pm 2nd floor hall door beak broken by vandalism parts were ordered and replaced."

The repair took several hours and the original invoice was in the amount of \$2541.18. Subsequently the male landlord successfully negotiated a reduction of the charge to \$630.95.

On the evening of January 2 the landlords spoke to the tenant and to the female witness. Both confirmed that the tenant had pried the elevator doors open with a tool but did not provide any further specifics. The landlords suggested a crowbar and they thought the two people seemed to agree with that suggestion.

The male landlord testified that they could tell from scratches on the doors that attempts had been made on the first and third floors to open the doors.

The landlords testified that a few days after the incident they found a crowbar in the building. The tenant denied using a crowbar on the elevator.

On January 7 the tenant fell off some steps while delivering papers and suffered multiple fractures to his left arm and wrist. He had surgery, has been hospitalized twice, and has been prescribed strong sedatives and painkillers.

On January 21, 2015, the landlords wrote the tenant a letter which said, in part:
"You could have phoned the fire department or 911 and they would have attended to this situation, as they had done in the past, without breaking the door or any cost to the company.

Now we got a bill to pay for this service and as we discussed, that we will hold you responsible for the bill which is \$254.18. a copy attached for your reference.

Please remit directly to the [elevator company] or contact us in writing as to how you want to pay this bill. If you can not pay all this at once, please contact us and we may be able to arrange a payment plan.”

When the tenant returned the letter and invoice to the landlords they issued a 1 Month Notice to End Tenancy for Cause on January 30, 2015. The sole reason stated on the notice was that the tenant has caused extraordinary damage to the unit or property.

The landlord testified that even if the tenant had agreed to pay for the damage they would have served him with a notice to end tenancy. They have had other issues with the tenant in the past and this episode was the final straw.

As part of their evidence package the landlord included documents relating to complaints about the tenant’s behaviour going back to 2012.

The notice to end tenancy was slipped under the tenant’s door on January 30. He had previously asked them not to post items on his door but to put any notices or other communications under his door.

Analysis

The evidence relating to the tenant’s interactions with other tenants and other issues would be relevant if the landlord was trying to end this tenancy on the grounds that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. However, that is not the reason stated on this notice to end tenancy so that evidence has minimal, if any, evidentiary weight on this application.

This is not a case where a tenant has caused damage to a rental unit or residential property by deliberate vandalism, unauthorized modifications, lack of maintenance or negligence.

The tenant was confronted with a situation where his friend was stuck in the elevator and in a state of panic. The tenant’s first step – to call the landlord – was sensible. The evidence is that the landlord told him he would be 45 minutes. The landlord did not testify that he told the tenant to call 911 or that he would be calling an electrician and to wait for him. The landlord has known this tenant for years and knows his limitations. He should have realized that the more direction the better for this individual.

Confronted with his friend’s distress the tenant panicked and forced open the elevator door. This was not the best decision and it resulted in damage to the door but it is clear that the tenant’s actions were not malicious, just not well thought out.

There is no evidence to link the crowbar found in the building to the tenant or even to the damage to the elevator.

I find that the tenant is responsible for the damage to the elevator and I award the landlord damages in the amount of \$630.96.

However, I find that this incident is not serious enough to end a long term tenancy. Accordingly, the 1 Month Notice to End Tenancy for Cause dated January 30, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the landlords were successful on the application for the monetary order they are entitled to reimbursement from the tenant of the \$50.00 fee they paid to file their application for dispute resolution.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause dated January 30, 2015, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.
- b. I find that the landlords have established a total monetary claim of \$680.96 comprised of damages in the amount of \$630.96 and the \$50.00 filing fee and I grant the landlords a monetary order in this amount. If necessary, this order may be filed in the Small Claims Court and enforced 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 04, 2015

Residential Tenancy Branch

