



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and an order to allow access to and from the site by the tenant or his guests. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing both parties were asked whether anybody else was with them. The tenant confirmed that no other person was with him; however, during the hearing I heard someone responding to my questions for the tenant to which the tenant repeated in his responses to me. The tenant then acknowledged that somebody was with him in his room but claimed that this other person joined him after the hearing commenced, even though I had not heard anybody enter or the tenant acknowledge any person's entrance. In speaking with this other person, I heard that he is another tenant in the building but that he was not a witness to the events that were subject to this dispute. I also confirmed that he had not been asked to assist the tenant or participate in the hearing. I instructed this person to leave the room the tenant was located and the tenant confirmed that this person had left.

The tenant withdrew his request for an order to allow him or his guests access to or from the property. As such, the remainder of this decision pertains to the Notice to End Tenancy that is under dispute.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy commenced December 9, 2014 and the tenant is required to pay rent of \$375.00 on the 1st day of every month. The rental unit is a “single room occupancy” unit with shared access to kitchen, bathroom and laundry facilities located in the downtown eastside part of town. The residential property has a staffed front desk where any guest must sign in by showing their identification and providing the name of the tenant and the room number of the tenant they wish to visit. The landlord maintains a guest log book as well as a log book of the activity at the property.

On March 27, 2015 the landlord posted a 1 Month Notice to End Tenancy for Cause on the tenant's door with a stated effective date of May 1, 2015 (the Notice). The tenant received the Notice on the same day it was posted. The Notice indicates the reason for ending the tenancy is because the *Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord*. The tenant failed to dispute the Notice within the time limit for doing so.

The landlord submitted that the Notice was issued to the tenant because of his involvement and the actions of the tenant's guests in an assault that took place upon a female tenant residing across the hall from the tenant on February 21, 2015y. The landlord described how the tenant's guests had entered the building to visit the tenant and after visiting the tenant they entered the unit across the hall and proceeded to assault the female tenant. It was alleged that the assailants also used a shaver provided by the tenant to shave her head. The police and ambulance were called to the property. The police conducted an extensive investigation and in March 2015 charges were laid against two of the tenant's guests. The landlord explained that they did not issue the Notice until the police shared their findings with the landlord in March 2015. The victim has since been relocated to a different site for fear of the tenant and/or his guests.

The landlord acknowledged that the tenant has been helpful in resolving other two other conflicts at the property but that the landlord has a zero tolerance policy with respect to violence against women in the properties. Further, as an aggravating factor, the tenant was accused of kicking in the door and threatening to physically harm another neighbouring tenant on April 11, 2015. That victim was relocated to another floor in the building as that tenant expressed he was fearful if he were to remain in close proximity to the tenant.

The landlord testified that the tenant was spoken to after each incident. With respect to the February 21, 2015 incident the tenant had acknowledged to the landlord that it was

his guests involved in the assault. With respect to the second incident in April 2015 the tenant had denied it was him who kicked in the door or threatened his neighbour.

In support of the landlord's position, the landlord provided copies of entries in the log books maintained by the landlord's staff and statements of: the staff persons that dealt with the assault complaints; a statement of the female victim; and, a case worker that provides services to the neighbour who had his door kicked in. The documents are consistent with the landlord's oral submissions.

The tenant responded by stating the police did a thorough investigation of the assault that took place across the hall and that he was cleared of any wrong doing. The tenant proceeded to testify that the people involved were not his guests. Upon further enquiry, the tenant stated that interviews he had with the police were in the capacity of a witness only.

I noted that the tenant provided a variety of inconsistent responses concerning the events that took place on the day of the assault upon the female tenant residing across the hall that I summarize below:

1. During the hearing, the tenant initially testified that he recalled that an assault took place across the hall from him but that he could not recall the date or even the month that it occurred. Nor, could he recall how many guests he had in his room preceding the assault but the tenant denied that any of his guests were involved in the assault.
2. In filing his Application for Dispute Resolution the tenant provided the following statements: An assault happened across hall and guest of mine know neighbours guest. Stuff was stolen. The neighbour was assaulted and my guest may be charged but I have been cleared by police that I had nothing to do with what happened. [corrected for spelling and grammar]
3. During the hearing, the tenant stated that the landlord's guest book system is flawed in that people will enter any name and unit number to gain access to the building but that person may not actually come to his room. However, the tenant later acknowledged that he had two female guests in his room and that he subsequently spoke to one of his guests who informed him that she was prohibited from the going near the property due to the assault.

With respect to the incident that took place on April 11, 2015 the tenant denied any involvement. The tenant submitted that the tenant who complained about him is always drunk and does not make sense. The tenant pointed out that the landlord has video

surveillance cameras in the hall and that the landlord did not produce any video in support of the allegations made against him. Further, the police attended the property in response to the incident and they left without speaking to him.

The landlord stated there is a camera in the hall but that is too far away from the door of the tenant who had his door kicked in and a clear image of the person(s) at the door could not be made out. The landlord did find damage to the door consistent with it being kicked. The landlord also explained that the tenant who claimed to have had his door kicked in and threatened did not indicate any other motive for relocating rooms other than for fear of the tenant. Nevertheless, that tenant had indicated that he did not wish to press charges which is why the police left without speaking with the tenant.

I pointed out to the landlord that the effective date on the 1 Month Notice was incorrect and should have read either April 30, 2015 or May 31, 2015. The landlord stated that rent was paid for May 2015 and that the landlord was willing to permit occupancy to the tenant until May 31, 2015.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice. In this case, the landlord has served a 1 Month Notice pursuant to section 47(1)(d)(ii) of the Act which provides that a tenancy may end where:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The landlord's burden of proof is based upon the "balance of probabilities" which is much less than the criminal standard of "beyond a reasonable doubt". A balance of probabilities means it is slightly more likely than not that an event occurred as alleged. As such, it is possible that a person accused of an offence may avoid prosecution under the criminal justice system but will face consequences under the Act.

In examining the landlord during the hearing and comparing the landlord's oral testimony to that of the documentary evidence before me, I found the landlord's submissions to be consistent and credible.

In contrast, I found the tenant's credibility seriously lacking considering his untruthfulness and great inconsistencies, such as when:

1. He testified that no other person was with him during the hearing when in fact there was.
2. The tenant's initial testimony that was almost exactly opposite as to what he had submitted in writing on his Application with respect to the involvement of his guest(s) in the assault that took place at the property and when confronted with the inconsistencies his version of events changed again to acknowledge that his guest(s) were charged criminally with the assault.

In light of the above, I accept that the landlord's version of events and I am satisfied, on the balance of probabilities, that the tenant's guest(s) assaulted another tenant on the residential property on February 21, 2015. As such, I am satisfied that the landlord has met its burden of proof that the criteria for ending the tenancy under section 47(1)(d)(ii) have been met. Given the Act provides that a landlord is obligated to protect the quiet enjoyment of its tenants, and given the seriousness of an assault to another tenant at the residential property, I uphold the Notice and I dismiss the tenant's application to cancel the Notice. Pursuant to section 53 of the Act, the incorrect effective date is changed to comply with the Act. Since rent was paid for May 2015 and the landlord is willing to permit occupancy until May 31, 2015 the effective date is changed to read May 31, 2015.

The tenant is ordered to return vacant possession of the rental unit to the landlord no later than 1:00 p.m. on May 31, 2015.

Conclusion

The tenancy ends effective 1:00 p.m. on May 31, 2015 and the tenant must return vacant possession of the rental unit to the landlord by that time.

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: May 14, 2015

Residential Tenancy Branch

