



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued May 5, 2015 (the "Notice").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first as they must prove that the Notice should be cancelled.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The Landlord confirmed that the rental unit is a room in a hotel which is primarily occupied by short term travelers; the Tenant is one of two tenants with long term rentals. No tenancy agreement exists. The Landlord described the tenancy as "evolving over time" starting as a week to week tenancy followed by a long term

tenancy. The Landlord could not provide evidence as to when the tenancy began only to say that it started in either 2012 or 2013. Monthly rent is payable in the amount of \$750.00 per month. No security deposit was paid.

The Landlord testified that the Tenant lives in the rental unit with his wife. Hotel staff employees clean the rental unit weekly, including vacuuming the carpet and changing sheets and towels. Disputes have arisen between the Tenant and the hotel staff in that the Tenant claims the staff do not clean his rental unit regularly and the Landlord claims it is the Tenant who refuses the staff entry.

The Landlord testified that he personally served the Notice on the Tenant on May 5, 2015. The reasons cited in the Notice were as follows:

- The Tenant, or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and
 - jeopardize a lawful right or interest of another occupant of the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

(the "Notice").

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, the Tenant had until May 15, 2015 to make his application.

The Tenant made his application for dispute resolution on May 13, 2015.

The Landlord testified as to the reasons for issuing the notice as follows

- the Tenant, or his wife, hang bedding out of the rental unit window;
- the Tenant solicits money from the staff and hotel guests for cigarettes;

- the Tenant props open the fire-door to permit easy access to the outside for smoking;
- the Tenant has been “harassing” maintenance staff by asking them for money; and,
- the Tenant called a friend of his from out of town and then when this friend arrived the Tenant was not at the rental unit; according to the Landlord, the Tenant’s friend was very upset and “took out his frustrations on the staff”;
- the Tenant has had numerous chances to correct his behaviour

The Landlord testified that he informed the Tenant that his behaviour was unacceptable in January of 2015 when he advised the Tenant that any further solicitation of hotel staff or guests would result in eviction.

Introduced in evidence was a letter dated January 26, 2015 from the General Manager of the hotel to the Tenant and which details “rules” the Tenant was to adhere to in order to remain staying at the hotel. Included in this letter were rules regarding regular cleaning of the rental unit, clarification around items which are free for short term guests only, (apples, bottled water, toiletries, coffee and the local newspaper), restrictions on laundry facilities and the Landlord’s demand that the Tenant not solicit hotel guests or staff for cash, food, cigarettes, bottles or lost and found items.

Also introduced in evidence was a letter dated May 5, 2015 from the General Manager to the Tenant which attaches the Notice, and details the Landlord’s reasons for issuing the Notice; including: the Tenant’s continued solicitation of hotel staff and guests; hanging bedding out of the window; propping open the fire exit doors; and, the incident with his out of town guest arriving at the hotel.

In response to the Landlord’s claims the Tenant testified as follows:

- that he did not call his friend to come from out of town, and that in any case, he wasn’t responsible for this person’s behaviour;
- he and his wife hang the sheets out the window because of dust mites;
- the hotel employees do not clean his rental unit as claimed by the Landlord, and that in fact his wife has to do all the cleaning;

- he did not dispute the Landlord's allegations that he solicits money and cigarettes from hotel employees and guests or that he props the fire door open; and
- he stated that he did not appreciate the severity of the Landlord's concerns until the hearing and that he wanted to correct his behaviour to ensure that the tenancy could continue.

Analysis

This is an uncommon tenancy in which the rental unit is located in a hotel. Both parties testified as to the inherent complexities and issues which arise when the hotel employees are responsible for cleaning a room which is also a long term rental.

I accept the Landlord's testimony and documentary evidence that the Tenant's behaviour, and in particular soliciting money for food and cigarettes, is disruptive to hotel employees and guests. However, I note that the Landlord failed to submit any independent evidence from such individuals which may have assisted me in assessing the severity of this disruption, and whether it can be characterized as "unreasonable" or a significant interference as provided for in section 47 of the *Act*.

The Tenant stated that he and his wife hang the sheets out the window as the hotel cleaning staff do not clean their room regularly. The Landlord testified that it is the Tenant who creates hurdles for the staff to attend to these tasks. Either way, I find that this behaviour, while likely aesthetically displeasing, is not sufficient reason to end a tenancy.

Both parties agreed that it was a term of the tenancy that the room would be cleaned weekly, with fresh sheets and towels being provided. The Tenant was cautioned during the hearing that he must accommodate the employees and agree to a set day and time for this weekly cleaning to occur. The Landlord also informed the Tenant that he intended to attend the rental unit to inspect the room for dust mites or bed bugs and that to this end he would be issuing a Notice of Entry. Should the Tenant refuse the Landlord, or hotel employees access for this purpose, it may be grounds for ending the tenancy in the future.

Minimal details were provided regarding the incident involving the Tenant's friend. While the Tenant's friend's behaviour towards the hotel employees appears to have been unpleasant, I accept that the Tenant was not aware that his friend had attended the hotel, and accordingly, he cannot be held accountable for his friend's behaviour.

After carefully considering the parties' testimony, the evidence filed, I find as follows.

The uncommon nature of this tenancy likely contributed to the issues raised in the January 2015 letter to the Tenant. Had there been any ambiguity about the "rules", the Landlord clearly articulated their expectations in this letter. The May 2015 letter made no mention of some of the issues raised in the January 2015 letter and presumably they were no longer an issue.

I accept that the Tenant was unaware of the severity of the Landlord's concerns and that he intends to change his behaviour to be less disruptive to the hotel employees and guests.

The Tenant is cautioned that propping open a fire door creates a safety and fire risk which must be avoided. While I find the Landlord has not met the burden of proving the tenancy should end in this application, reoccurrences of such behaviour may result in the end to this tenancy.

In consideration of the testimony of the parties, the evidence filed and section 47, I find that the Landlord has failed to meet the burden of proving that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord alleged the Tenant was involved in illegal activity. No details of the illegal activity were provided. Accordingly, I find that the Landlord has failed to prove that the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardize a lawful right or interest of another occupant of the landlord;

The parties had a verbal tenancy agreement. The burden of proof is on the Landlord to prove the material terms of the contract. I find that the Landlord has failed to meet this burden. As well, the Landlord failed to articulate which material term was breached by the Tenant warranting eviction; accordingly, I am unable to find that the Tenant breached a material term.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Landlord and Tenant confirmed that they would discuss the possibility of the Tenant and his wife moving to a furnished two bedroom apartment for the same rent amount. It

is hopeful that such an arrangement can be settled and that the parties will agree to a mutual end to the tenancy and enter into a formal written tenancy agreement to avoid, as much as possible, any further miscommunications about acceptable behaviour.

Conclusion

The application is granted and the Notice is set aside.

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: June 30, 2015

Residential Tenancy Branch

