



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY FOR THE CHRISTIAN CARE OF THE ELDERLY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause agreed by the parties as dated May 31, 2015, and recover the filing fee for the application. The tenant, three representatives for the landlord, and one witness for the landlord participated in the teleconference hearing,

Both parties submitted document evidence, and each acknowledged receiving the evidence of the other. The parties were given full opportunity to mutually resolve their dispute to mutual satisfaction - to no avail. The hearing proceeded on the merits. The parties were permitted to provide *relevant* evidence including *relevant* testimony and fully participate in the conference call hearing. I have reviewed all document, digital and oral evidence before me that meets the requirements of the Rules of Procedure and is in respect to matters up to and including May 31, 2015 pursuant to the subject Notice to End in dispute. Only evidence *relevant* to the issues and the findings in this matter are / will be addressed in this Decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Does the landlord have *sufficient* cause to end the tenancy?

Background and Evidence

I do not have benefit of the Notice to End Tenancy in dispute, however, it is undisputed by the parties that on May 31, 2015, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause – which would have an effective date of June 30, 2015. The notice indicates the reason for ending the tenancy as follows pursuant to **Section 47(1)(d)(ii)** of the Act: *the tenant: has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The onus is on the landlord to prove they issued a valid notice to end for valid reason. As a result the landlord provided testimony in support of their position that the tenancy should come to an end, and orally requested an order of possession if I uphold their notice, or otherwise dismiss the tenant's application.

All parties were sworn and gave affirmed testimony.

Landlord's Evidence

The landlord relies on their document evidence and their witness. An abundance of document evidence has been submitted, but only the evidence which is *relevant* to this matter is referenced. The landlord testified they sought to end the tenancy subsequent to a defining event, in which the witness, FT, reported to the landlord's representative that the applicant tenant of this matter had, over some time, "extracted" bomb making information from them about which they were knowledgeable – and with which information they conspired with *another tenant* of the residential building to "blow up" the landlord's residential property on which the purported conspirators also resided. On receiving the information the landlord reported it to Police – whom investigated the claimed threat which additionally involved the *terrorist division* of Police. Police interviewed the landlord representatives and interviewed FT independently. It is further undisputed that on the same day multiple Police officers visited the applicant tenant. Consequently the *terrorist division* further assessed the entire situation and ultimately reported to the landlord they did not determine a threat / "the risk to be low". The landlord testified that they determined otherwise: deciding the applicant tenant indeed posed a threat to all occupants of the residential building and the surrounding events

had seriously concerned the original complainant, FT, as well as the landlord's representative, but moreover the safety of all occupants of the building was in peril as a result of the tenant's conduct.

The landlord provided Witness FT - testifying under oath.

The witness testified that over a period of time they came to a determination the applicant tenant was obtaining bomb making information from them and was conspiring with another tenant to blow up the building in the same manner as the widely known Oklahoma City bombing of 1995, utilizing diesel fuel and fertilizer. The witness testified they used to work as an "underwater blaster" and as such had knowledge of explosives and explosive operations. They testified the applicant also asked them if they had a locker – which they did not - and would they obtain a locker in their name for use by the applicant? The witness testified that they did not ask why they wanted a locker in his name, however they determined it was for the purpose of storing bomb making materials. The witness testified the applicant tenant never told them they were building a bomb or planning to bomb the residential property; however, they testified they "put 2 and 2 together" and in their thinking determined the applicant tenant was intending to blow up the building and would "frame" a different tenant for the blast. The witness claims they moved from the building as they felt threatened by the applicant tenant after their report to Police. On questioning, the witness confirmed that they assumed threats to themselves and the residential building based solely on personal considerations.

At this juncture the witness inexplicably exited the conference call.

Tenant's Response

The applicant tenant stated they "were not planning to blow up the building". They testified that on knowledge of the 20 year anniversary of the *Oklahoma City bombing* they queried the witness about the incidents and mused about the particulars surrounding the bombing with the witness, with whom they were friends, and as the witness was known to have had a career as a "blaster" and were likely knowledgeable of such things. The tenant stated they simply asked the witness about it in conversations, but never with the intent to make a bomb or frame the crime. The tenant also testified that as their own locker was very full they enquired of the witness if they would obtain a locker from the landlord - which they could also utilize.

The applicant tenant was forthright in testimony they at no time planned an explosion or conspired to cause harm.

Analysis

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice to End was validly issued for the reason stated and, moreover, for *sufficient* reason. Effectively, I find the landlord has not met their burden in this matter.

The landlord has not provided that they ever had direct knowledge in respect to the applicant tenant's conduct or intentions to detonate a bomb. The landlord relies on the information provided by their witness. I find they accepted the information of their witness as being credible and rightly referred their concerns to Police. On their assessment and in concert with their experts, Police determined the landlord's concerns of a threat did not warrant further resolve as the risk was deemed low.

I found the witness was forthright in presenting their evidence. However, in the absence of information the witness clearly drew conclusions, or "put 2 and 2 together" about the tenant's intentions – as in their *speculation* about the purpose behind the tenant's request of a locker. This leads me to think the witness may have drawn conclusions based on other preconceptions and as a result I find their evidence is unreliable. I accept their testimony they shared knowledge of explosives with the tenant and that there was more than one conversation on the subject of the Oklahoma City bombing. The witness did not present evidence they ever relayed specific bomb making knowledge to the tenant, or had informed knowledge from the tenant they had an intent, the means, or access to means to create a bomb so as to be a threat. I have further not been presented with evidence of other individuals - than the tenant, their alleged conspirator and the witness - knew of a threat, or that other individuals reported concerns of a threat. I *prefer* the landlord's other evidence - that Police, in their threat assessment process, did not determine the existence of a credible threat to the health or safety of others. The landlord may think differently; however, the landlord has not provided *sufficient* evidence to support their thinking on this matter justifies ending the tenancy. I find the landlord has not provided sufficient evidence the tenant was

conspiring to “blow up” the residential building. I find their Notice to End was issued for insufficient reason to operate to end a tenancy. As a result I am unable to establish, even on a balance of probabilities that the landlord issued the tenant a valid Notice to End for the reason the tenant, *seriously jeopardized the health, safety or lawful right of another occupant or the landlord*. As a result of all the above, **I Order** the Notice to End dated May 31, 2015 **cancelled**, or set aside.

As the tenant was successful in this matter they are entitled to recover their filing fee.

Conclusion

The tenant’s application is granted. The landlord’s Notice to End is **set aside and is of no effect**. The tenancy continues.

I Order the tenant may recover their filing fee by deducting **\$50.00** from future rent.

This Decision is final and binding on both parties.

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: July 21, 2015

Residential Tenancy Branch