



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties acknowledged receipt of the other party's materials for this hearing. The landlord presented one witness at this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on May 1, 2014 with a rental amount of \$600.00 payable on the 31st of each month. The landlord testified that she continues to hold a \$300.00 security deposit paid by the tenant at the outset of the tenancy. The tenant applied to cancel a 1 Month Notice issued by the landlord. The landlord made an oral application for an order of possession if the tenant is unsuccessful in his application. A copy of the residential tenancy agreement was submitted for evidence at this hearing.

The landlord also entered into written evidence a copy of a 1 Month Notice to End Tenancy for Cause. In the 1 Month Notice, served on July 29, 2015 and requiring the tenant to end this tenancy by August 31, 2015, the landlord cited the following reasons to end the tenancy:

Tenant is repeatedly late paying rent;

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;*

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.*

The landlord submitted documentary evidence for this hearing, including receipts made out to the tenant for his rent payments. Each receipt included the tenant's name, the landlord's signature, the date and the amount paid as well as the rental unit information. She testified that the tenant has paid all rental amounts up to July 31, 2015 but has, as of the date of this hearing not paid rent for August 2015. She also testified that the tenant has two unpaid hydro bills. The landlord submitted receipts that she issued to the tenant for rent payments. The tenant's rent is payable on the 31st of each month. Over the last three months, the tenant paid the following amounts;

May 1 and 2, 28, 31, 2015 -- \$912.50 indicating on 2nd receipt "hydro \$62.50"

May 5, 16 and 22, 2015 money paid towards hydro bill

June 29, 2015 \$630.00 indicating on receipt "rent due nil hydro \$32.50"

July 1, 2015 indicating payment of remaining hydro amount

The landlord provided a handwritten witness statement stating, "I was witness to [the landlord's] tenant smoking illicit drugs in her yard the basement apt. The fumes were quite noxious and both of us were quite uncomfortable." This witness testified at the teleconference, repeating her written testimony. When questioned by the tenants, the witness testified that she was quite certain it was the tenant she saw smoking and that she knew by the smell that it was marijuana the tenant was smoking. The landlord submitted a doctor's note that indicates she has asthma and her airways are triggered by smoking/cannabis etc., and that she is advised to avoid these allergens.

The landlord provided a copy of a handwritten list of rules and regulations. Among eight rules, it states at no. 1, "only outdoor smoking is permitted. Drugs will NOT be tolerated. Parties over five (5) require the landlord's approval." The landlord testified that the tenant does not smoke tobacco cigarettes inside the residence but he smokes marijuana both inside and outside the residence, in contravention of current legislation and her rules. The tenant disputes that he smokes any illegal substances.

Analysis

The landlord issued a notice to end tenancy for cause on July 29, 2015. On that same day, the tenant applied to cancel that notice to end tenancy thereby applying within the appropriate time frame. The tenant disputes the notice. He argued that the landlord had not supplied evidence

that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord OR engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that the tenant regularly paid rent late. The landlord testified that the tenant often did not pay rent in accordance with the rental agreement but paid later, over the course of the following month. The landlord issued receipts to the tenant for each payment. She submitted those receipts as evidence for this hearing. The tenant disputed the landlord's testimony that his rent was repeatedly late. The records submitted by the landlord do not clearly illustrate the tenant's rent payments are late. The tenant made no admissions in this regard and the landlord did not explain her materials to shed light on her accounting practices. As an aside, I note that none of the receipts issued by the landlord indicate that she was providing the receipts for "use and occupancy only" thereby advising the tenant that any late payments of rent that she accepted do not act to continue or reinstate the tenancy.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...

I find that the landlord's receipts and testimony did not clearly prove on a balance of probabilities that the tenant was repeatedly late in paying rent. Under this tenancy agreement, the rent is payable on the 31st of each month. According to the receipts submitted by the landlord, it appears that, over the last three months, the tenant paid \$912.50 over the course of May 2015 and by the 31st of the month. Based on his rental amount owed, it appears that he also paid rental arrears from April 2015. A receipt indicating "rent due nil" dated June 29, 2015 suggests that the tenant was up to date on rental payments at that time, as well. Although the landlord was given full opportunity to describe the tenant's repeated late payment of rent, her description was unclear. The tenant disputed that he was repeatedly late paying rent. He described his monthly payments in a clear manner, indicating that while he sometimes paid over the course of the month, the landlord was always provided with her rent. I found the tenant's testimony more understandable and I accept the tenant's submission that the landlord has not proven her claim on this ground to end the tenancy.

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the validity of the notice issued to the tenant, on a balance of probabilities. I find, on

weighing of the evidence and considering the testimony of both parties, that the tenant cannot be said to be repeatedly late in his rental payments.

The landlord testified that the tenant has seriously jeopardized her own health, safety or lawful right. To justify an end to tenancy with respect to the grounds provided in her 1 Month Notice, the landlord must show that the tenant has **seriously** jeopardized her health. She submitted into evidence a one line note from a doctor to indicate that any smoke can aggravate her asthma and that she should stay away from it. This generic note does not indicate that she has been exposed to any form of smoke or any details or results of recent exposure.

The landlord's witness testified, with little supporting detail, that on one occasion, she believed that the tenant was smoking marijuana outside of his rental unit, sending smoke in the direction of herself and the landlord. The witness' testimony was that she and the landlord were "quite uncomfortable". I find that the documentary submissions of the landlord, as well as her witness testimony do not sufficiently support a claim that the tenant **seriously** jeopardized her health. I do not find that this ground for an end to tenancy has been justified.

The landlord submitted that the tenant was engaged in illegal activity. She provided no evidence to support this serious allegation. There was no proof supplied that the tenant was engaged in what the authorities deem to be illegal activity. In fact, the landlord did not testify to involving the authorities at any point. To justify an end to tenancy on grounds of illegal activity, the landlord must prove on a balance of probabilities both that the tenant was engaged in illegal activities and that those illegal activities adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The landlord submitted no evidence of complaints or concerns from other occupants of the residence with respect to the tenant. The landlord has complained that her well-being is affected by the tenant's behaviour but her supporting materials are of limited evidentiary value. If the landlord claims that her quiet enjoyment, security, safety or physical well-being are impacted by the tenant's illegal behaviour, she must prove both elements to my satisfaction. As stated, I do not find that the landlord has proven that the tenant has engaged in illegal activity or broken the rules that she attached to her residential tenancy agreement.

At the conclusion of this hearing, after several submissions from both parties, reviewing the documentary evidence with the parties and hearing from the witness, I asked if the landlord if she had any further submissions. She responded that she had no further submissions and, before ending the call, I asked her again. She again responded that she had no further submissions. I ended the hearing and the tenant disconnected from the teleconference. At that time, the landlord stated that she had more to say. I did not allow her to provide further testimony in these circumstances, and in the absence of the tenant. I refer to two Dispute Resolution Rules of Procedure for reference:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

14.2 Concluding the dispute resolution proceeding

The dispute resolution proceeding is concluded when the arbitrator determines that it is concluded.

I concluded the hearing when both parties indicated that they had no further submissions. I also determined that, given the provision of 26 pages of documentary evidence from the landlord and the length of the hearing for this type of matter, that the landlord had sufficient opportunity to present her position. Finally, I note that the tenant was no longer on the line and it would have prejudiced his application to have no opportunity to respond to any further submissions by the landlord.

Based on all of the evidence presented, I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has made an application pursuant to section 47(4) of the *Act* to cancel the notice to end tenancy. In this case, I find that the notice has not been justified and should be cancelled. The tenancy will continue.

Conclusion

I grant the tenant's application to cancel the notice to end tenancy for cause. This tenancy continues until ended in accordance with the *Act*.

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: August 24, 2015

Residential Tenancy Branch

