



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nelson CARES Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order permitting more time to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

An agent for the landlord attended the hearing with another person assisting, who did not testify or take part in the proceedings. The tenant also attended, and the landlord's agent and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony given, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issues to be Decided

- Should the tenant be granted more time than specified in the *Residential Tenancy Act* to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy given to the tenant was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on July 18, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$400.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$193.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 45 rental units within a complex.

The landlord's agent further testified that on August 12, 2015 the landlord's agent personally served the tenant with a 1 Month Notice to End Tenancy for Cause. A copy of the notice has been provided by the tenant and it is dated August 12, 2015 and contains an effective date of vacancy of September 30, 2015. The reason for issuing the notice is: "Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord."

The tenant was given notice of an inspection, and during the inspection in the rental unit for bed bugs on August 5, 2015, the resident supervisor of the rental complex found 3 marihuana plants in the rental unit, and he told the Acting Manager at the time. The tenant was given another notice to enter the rental unit dated August 6 2015, to enter the rental unit on August 7 to investigate the allegation, which also stated that the landlord would re-enter on the 10th as well to ensure removal of the plants had been completed. The landlord's agent went there with another agent of the landlord on August 7 and observed the plants and took photographs. The tenant was not there. The other agent of the landlord went back on the 10th and the plants were still there, so a letter was left for the tenant requesting that the plants be disposed of by the 12th. The landlord's agents both attended on the 12th and the plants were gone, and the tenant was served with the 1 Month Notice to End Tenancy for Cause.

The landlord's agent further testified that the Addendum to the tenancy agreement talks about crime free housing and that no drug activity is permitted, and read portions of a document relating to that issue as part of her testimony, but neither a copy of the tenancy agreement nor the Addendum have been provided.

The parties have another hearing scheduled for November 26, 2015 at 9:00 a.m. That hearing is with respect to the landlord's application for an Order of Possession for cause and for breach of an agreement. The landlord's agent tried to have that application joined with this application, but was not successful.

Further, the landlord held a meeting with tenants wherein tenants were advised that there was zero tolerance for criminal activity, and if tenants failed to comply with that, housing would be in jeopardy and the police would be called. The tenant wasn't at that meeting, but Minutes were posted in 3 different places throughout the building.

The landlord's agent orally requested an Order of Possession.

The tenant testified that she suffers from a mental disability and believes she disputed the notice to end the tenancy within the time required.

The tenant also testified that the 3 plants are not just cause, and the landlords are over-reacting. The plants were disposed of on August 10, 2015.

The tenant does not have a medical license or a family doctor, and the only physician available to her is a methadone doctor, and he is not compassionate and has not issued a license for possession of marihuana. The tenant requires medication for pain.

The plants were not costing anyone or hurting anyone, and the tenant got rid of them as soon as she returned home on August 10 and found 3 notices from the landlord. The tenant wasn't home the whole week of August 3 to 10, and that was when the landlords chose to deliver notices and conduct an inspection. There have never been bed bugs in the rental unit. The tenant did what she was told to in the notices. The landlord's agents came back on the 12th and the plants were gone as well as the pots they were in. That was the only week of the whole year the tenant was away, and feels she's being scapegoated by the landlord.

The tenant is on a mental disability and has difficulty remembering things, but was told by an employee of the Residential Tenancy Branch to file the application and which boxes to check. The tenant does not know about being late filing the application or why she was advised to check the box seeking more time to dispute the notice to end the tenancy.

Analysis

The landlord's agent testified that the 1 Month Notice to End Tenancy for Cause was served on the tenant on August 12, 2015 personally. The tenant's application for dispute resolution was originally filed on August 18, 2015 and then amended on August 24, 2015. The *Act* states that such a notice must be disputed within 10 days of service, and I am satisfied that the tenant has done that. No more time is therefore necessary.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord's agent read a crime free housing document stating that it was a part of the Addendum, but has not provided a copy of it or of the tenancy agreement. The tenant does not know whether or not such a document was attached to her tenancy agreement at the beginning of the tenancy, and I am not satisfied that the document read into the

record by the landlord's agent was in fact a document agreed to by the tenant, in the absence of any evidence to support that.

I accept that a landlord has the duty to ensure safe accommodation for all tenants within a complex, however the landlord ordered the tenant to remove the plants by a specific date, and the tenant didn't receive the notices until later. Upon receiving them, the tenant disposed of them but the landlord chose to end the tenancy anyway. I find that the tenant did what she was told to do to avoid losing her home, and I am not satisfied that the notice was justified in the circumstances.

The notice to end the tenancy is hereby cancelled and the tenancy continues. The landlord's agent testified that the parties have a hearing scheduled for November 26, 2015 at 9:00 a.m., and the landlord's agent testified that the hearing is with respect to the landlord's application for an Order of Possession for cause and for breach of an agreement. If that application refers to the notice to end the tenancy which is the subject of this hearing, I suggest that the landlord cancel the hearing. Having cancelled the notice, the landlord's application cannot succeed. However, if the landlord's application is for other than the 1 Month Notice to End Tenancy for Cause dated August 12, 2015, the landlord may proceed with the hearing or cancel it at the landlord's discretion.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 12, 2015 is hereby cancelled and the tenancy continues.

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: October 09, 2015

Residential Tenancy Branch

