



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Palisade Apartments and Witmar Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes GNE, CNC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy given by the landlord because the tenant's employment with the landlord had ended.

The tenant attended the hearing accompanied by an agent, and an agent for the landlords also attended.

During the course of the hearing the tenant testified that she was not ever employed by the landlord and an incorrect box had been checked on the Tenant's Application for Dispute Resolution. With the consent of the landlord's agent, the Tenant's Application for Dispute Resolution is hereby amended to show that the tenant seeks an order cancelling a notice to end the tenancy for cause.

The parties and the tenant's agent each gave affirmed testimony, and were given the opportunity to question each other with respect to the testimony and evidence provided, 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.

Issue(s) to be Decided

Have the landlords established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlords' agent testified that this fixed-term tenancy began on December 1, 2015 and reverts to a month-to-month tenancy after the first year. The tenant still resides in the rental unit. Rent in the amount of \$875.00 per month is payable on the 1st day of each month and there are no rental arrears. On November 24, 2015 the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment within a complex containing many apartments and buildings, and a copy of the tenancy agreement has been provided.

The landlords' agent further testified that he served the tenant on January 28, 2016 with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated January 28, 2016 and contains an effective date of vacancy of February 28, 2016. The reason for issuing the notice states: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The tenancy agreement includes an Addendum which the parties both signed at the beginning of the tenancy, which includes the following term: "L. The tenant(s) hereby agrees that there will not be any smoking either by the tenant(s), roommates and / or visitors of the tenant in any common area including, but not limited to the suite the tenant is renting, hallways, the swimming pool, hot tub, exercise room, roof top patio and any entrance or exit of the complex." The landlords' agent testified that the landlords have received numerous complaints about the tenant smoking in the building. A neighbouring tenant, beside the tenant's rental unit, complained about it and the landlords' agent warned the tenant verbally. He tried to resolve it without having to put any written notes in the tenant's file. The landlords' agent gave the tenant a warning letter on January 26 and another on January 28, 2016, copies of which have been provided. The landlords' agent has smelled smoke in that hallway numerous times himself.

The tenant and the neighbouring tenant have issues, and the tenant has complained to the landlords' agent that the neighbour is harassing her. Although the neighbouring tenant lives with one of the owners of the rental complex, the landlords' agent testified that neither the neighbouring tenant nor that owner have any say in managing the complex. The notice to end the tenancy was given due to the tenant's failure to comply with the Addendum to the tenancy agreement by smoking in or near the rental complex.

Copies of letters provided by the neighbouring tenant have been provided as well, which state that the tenant was smoking in the rental unit on January 19, January 26 and

January 27, 2016. The first allegation states that the neighbouring tenant saw the tenant smoking in the hallway, and that the tenant admitted that she smokes in her suite. The second allegation states that the neighbouring tenant, while walking in the garden, saw the tenant smoking in her suite. The final letter states that the neighbouring tenant smelled smoke in the hallway outside the suites and the tenant threw a rock at the neighbouring tenant.

The tenant's agent testified that the tenant admits that she smoked in the rental unit twice, and once received a warning. Now the tenant goes to a smoking area. There were never any verbal warnings, and the warning letter first given by the landlord was delivered to an incorrect apartment. Then the tenant found the notice to end the tenancy on the door of the rental unit. Once the tenant received the notice, she went to the landlords' agent, admitted to smoking and blowing it out the window and promised that it wouldn't happen again.

The tenant's agent also testified that the neighbouring tenant deliberately antagonizes the tenant by opening the door to the outside so it's cold in the tenant's rental unit. The laundry room is between them, and the neighbouring tenant is the girlfriend of one of the owners and has also locked the laundry room door denying access to the tenant. There have been on-going problems and the neighbouring tenant has made some untrue allegations about the tenant. The tenant hasn't had a smoke in the rental unit since December 28, 2015. The tenant has also texted the owners 3 times for help with the neighbouring tenant but has received no replies back. Police were called twice, the second of which involved the neighbouring tenant trying to run over the tenant with her vehicle. The tenant didn't want to press charges.

The tenant received the 1 Month Notice to End Tenancy for Cause before the tenant received the landlords' warning letter.

The tenant testified that she opened her window on December 28, 2015 to have a couple of drags off a cigarette out the window. The neighbouring tenant smelled it, banged on the tenant's door and told the tenant to have some respect. The tenant apologized. The neighbouring tenant was hostile, and the tenant went to the office to advise management who said they wouldn't do anything about it because the neighbouring tenant lives with the owner. They said the best the tenant could do was to move out.

Things got worse, and the neighbouring tenant, when meeting the tenant in the common hallway, called the tenant a crazy bitch and yelled, "I'm getting you evicted," and then, "Did you get your eviction notice yet?" The letters provided by the neighbouring tenant are incorrect; the tenant was away for 3 days during the time of the alleged smoking in

January, 2016. When the tenant arrived home, the 1 Month Notice to End Tenancy for Cause was posted to the door of the rental unit. The tenant also denies throwing a rock at the neighbouring tenant.

The tenant suffered some injuries previously in a motor vehicle accident and cold air causes pain. The tenant told the neighbouring tenant that thinking it might resolve the issue of leaving the outside door open and now the neighbouring tenant uses that to hurt the tenant.

Analysis

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.

I have reviewed the tenancy agreement and the Addendum, and it is clear that smoking is prohibited and the tenant agreed to that at the beginning of the tenancy. Whether or not the tenant and the neighbouring tenant have personal issues, the issue before me is whether or not the landlord had cause to issue the notice to end the tenancy.

The tenant denies smoking in the rental unit or hallway except for one occasion on December 28, 2015. The landlords' agent testified that he has smelled smoke in that hallway on several occasions. The tenant's agent takes the position that since the tenant didn't receive a warning prior to receiving the 1 Month Notice to End Tenancy for Cause, the notice should be cancelled. The reason for issuing the notice does not say: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The reason actually states: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

If I were to accept the testimony of the tenant that she was not even home from January 26 to 29, 2016, then I would have to discount the letters from the neighbouring tenant regarding alleged smoking incidents on January 26 and 27, 2016. However, considering that the tenant did not mention the other alleged incident on January 19, 2016, the tenant admitted to smoking in the rental unit on December 28, 2015 and considering the testimony of the landlords' agent that he has warned the tenant and has smelled smoke in that area of the building that only has 2 rental units, I find that the neighbouring tenant has been unreasonably disturbed by it, and the landlords had cause to issue the notice.

The tenant's application is dismissed.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must provide an Order of Possession in favour of the landlord, so long as the notice is in the approved form. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has already passed, I grant the order on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: March 23, 2016

Residential Tenancy Branch

