



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nelson Place Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing as well as an assistant. An agent for the landlord company also appeared. The tenant and the landlord's agent gave affirmed testimony and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness concerning the evidence and testimony 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

Has the landlord established that the 1 Month Notice to End Tenancy for Cause 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 September 1, 1974 and the tenant still resides in the rental unit. Rent in the amount of \$869.00 per month is currently payable, and there are no rental arrears. The rental unit is an apartment within a 19 story complex containing well over 100 units.

The landlord's agent further testified that on March 7, 2016 the tenant was personally served by another agent of the landlord with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated March 7, 2016 and contains an effective date of vacancy of April 30, 2016. The reasons for issuing the notice state:

- 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;
 - put the landlord's property at significant risk.

The landlord also provided a letter to the tenant on March 7, 2016, a copy of which has been provided. It states, in part: "...if you do not get help immediately in cleaning up your suite and having someone to come to see to your day to day living needs, the form "1 Month Notice to End Tenancy for Cause" that is accompanying this letter will come into effect April 30, 2016. By April 30th, 2016 you will need to find alternate accommodation."

The landlord has provided copies of 2 incident reports made by the current building manager and 1 made by the previous building manager. The incident reports show that on 2 occasions the tenant left taps running causing flooding, the first dated November 30, 2013. On the second occasion, the report is dated February 24, 2016 and states that a plumber was repairing a suite next to the tenant's rental unit and found that the tenant had left the tap running but caught it soon enough. Also, an incident report dated July 2 is provided stating that the smoke detector sounded due to the tenant allowing a pot to boil dry with food in it on the stove causing the smoke. The incident report contains handwriting indicating that it was submitted in 2013.

The landlord's agent further testified that the tenant is elderly, smokes and has mental lapses and forgets things, and 138 other suites could seriously be affected. The tenant gets irate and is hard of hearing. The landlord's agents knew the tenant needed help and the assistant manager got ahold of a care worker. The tenant has received some help, but the landlord's agent is worried about damages, escalation, safety of the tenant and other tenants in the complex.

The landlord's witness testified that he is the current building manager of the rental complex, and served the 1 Month Notice to End Tenancy for Cause dated March 7, 2016 personally to the tenant on March 7, 2016.

The witness wrote 2 incident reports and confirmed in his testimony that the contents are true. On one occasion a contractor noticed water in the common hallway coming from the tenant's suite. The witness attended and no one at the rental unit answered the door. The witness went into the rental unit, found water all over the kitchen floor, and the tenant was coming out from the bedroom. The water was cleaned up from the rental unit and common hallway, and the witness told the tenant that the water had to be shut off due to work being done, and would be back on shortly.

The tenant testified that he has resided in the rental unit for 42 years; it's his home and in 38 of those years there has never been a complaint from management. However, 4 years ago a doctor prescribed pills and told the tenant to take Metamucil and drink plenty of water. Pills prescribed caused balance issues, insomnia, weakness and memory loss which is why the incidents took place. Another doctor told the tenant to stop taking them.

The tenant agrees that while cooking smokies, the water boiled dry and the smoke alarm went off, but the tenant caught it within 15 seconds. The tenant has only had 4 temporary memory losses in his life. The second time he boiled the smokies dry, he went to get them and the building manager and a maintenance fellow knocked on the door and the tenant let them in.

The tenant is no longer taking the medication and now takes an alarm clock with him and sets it so that even if he forgets, the alarm will alert him.

During the course of the tenant's testimony he was cautioned several times about saying the same things over and over again.

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. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have reviewed the incident reports provided by the landlord, and the tenant does not dispute them. However, the first 2 of the reports were made well in excess of 2 years ago. The tenant very carefully explained his past medical issues and prescription medications and explained that he has stopped taking those pills. The only incident report that is recent is the third report which states that the tenant mistakenly left a tap running, but no damage was caused. Although the tenant may need some assistance with day-to-day activities, I cannot consider incidents that took place a long time ago to be cause to end the tenancy, and I am not satisfied that the single incident recently is enough to justify ending the long-term tenancy.

The notice to end the tenancy is cancelled and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 7, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: April 22, 2016

Residential Tenancy Branch