



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on June 30, 2016, to suspend or set condition on the landlord’s right to enter the unit and to authorize the tenant to change the locks.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenant’s applications is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on June 30, 2016, be cancelled?

Background and Evidence

The tenancy began on October 1, 2015. Rent in the amount of \$650.00 was payable on the first of each month. The tenant paid a security deposit of \$325.00.

Neither party filed a copy of the Notice as evidence for my review. The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 1, 2016.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that since the tenant has moved in to the rental premises they have continued to significantly interfere and unreasonable disturb the other occupants by continuing to issue complaints and these complaints are unfounded and the other occupants now feel that they being harassed. Filed in evidence is a chronological order of events.

The landlord testified that they have investigated each complaint, which included going to the subject rental units, interview neighbours and each time there was no evidence to substantiate the allegation. The landlord stated that the tenant has been warned about filing false complaints.

The landlord testified that the majority of complaints received are about smoking and each complaint was investigated and was unfounded as the tenants are all no smokers.

Filed in evidence are statements of the occupants, which in part read,

BH, unit 409, stated that they are non-smokers indicating they are non-smokers who do not smoke in the apartment... as accused of doing. ... we would appreciate if ... would stop harassing us and apologize in regards to the false accusation..

DM, MS, unit 307, state that they are non-smokers who do not smoke in the apartment... we would appreciate if ... would stop harassing us...

DM, MS further stated that they have not used he suite for a smoking room as accused of.

RD, unit #406, stated, I am notify you ... I have never rubbed against the door ornament of suite #407 hollering down the hallway "No she's still in there". That ... accused me of doing."

[Reproduced as written]

The landlord testified that the occupants in #409, have been accused of smoking by the tenant. The landlord stated that the occupants #409 have lived in the building for 20 plus years and there have never been any complaints. The landlord stated the occupants were very upset by the false accusation and were concerned about their tenancy.

The landlord testified that the tenant continues to harass the occupant in #307, about smoking and there is no evidence at all. The landlord stated that the occupants of #307 are not smokers and if they were smoking to the extent the tenant submits there would be evidence when they attend to inspect. The landlord stated the tenant will not stop this harassment the occupants. The landlord stated that the tenant has also approached other occupants trying to involve them in these matters.

The tenant testified that they have not involved any other occupants in these issues.

The tenant testified that they have not accused #409 of smoking. The tenant stated there was a very intense smell for two nights in a row, which was apparently from an smelly air cleaner.

On page 1 of the tenants written submission the tenant states,

"Now, if in fact smoke is coming from #409, management says it is not but for 2 days last week they had on their patio a very stinky, smoky air cleaner that spewed nicotine and chemicals all night until 7:30am. The air was so toxic that during the heat wave I could not even crack a window for the smell. Filed in evidence are 2 photographs which are of poor quality said to be showing an air cleaner on the balcony of unit #409."

[Reproduced as written]

The tenant testified that when they moved into the building unit #307, was being used as a short stay rental and there were problems with smoking and noise. The tenant stated that in December 1, 2015, an elderly couple moved in, then someone moved in with them. The tenant stated that just because the occupants state there is no smoking that does not mean that they don't smoke. The tenant stated that #307 wakes up at 7am and walks across the floor and then suddenly smoke comes into their apartment.

The tenant testified that unit #307, is being used as a common smoking room that has not been authorized by the landlord. The tenant stated that when the elderly couple leave for the day that other occupants access their unit to smoke all day. The tenant stated that they were suspicious and wanted to prove to the landlord that this unit was

used as a common smoking room so they followed the occupant that lives across from them to the subject unit and watched them access the unit to smoke.

The tenant testified that they have kept a diary of events. Filed in evidence is a copy of the tenant's diary.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, I am satisfied that the tenant truly believes that there is smoking in the building; however, I find these accusations to be unfounded. The landlord has investigated the complaints and has interviewed other occupants and there was no evidence of smoking.

While the evidence of the tenant was that they did not accuse unit #409 of smoking, I find that is not supported by the written submission, as to spew nicotine would indicate they were smokers.

Further, if unit #307 was being used as a common smoking area as alleged, the evidence of smoke would be overwhelming, no evidence was found. Further, it is not reasonable that these occupants, that were new to the building, would allow their rental unit to be used a common smoking area for the building.

I have also read the diary of the tenant and their notes cannot be reliable.

As an example the tenant writes,

Sunday Jan 16, 2016, smoking began at 10am and every 15 – 25 mins, he got up, pounded across the floor to patio door and then smoke came in my living room. I would do the same, but turn fan on.

[Reproduced as written]

Firstly, I find it would be impossible for the tenant to know if the person was male or female, as they were not visibly seen. Secondly, this unit is below the tenants, I find it highly unlikely that walking on their floor would cause the tenant's unit, which is above, to be pounding. And if the tenant could feel the person below walking, which is not unreasonable in a wood construction building, it would not be reasonable for the tenant

to purposely pound on their floor. Further, there were no complaints from the occupant below unit #307, which would be reasonable as the alleged pounding of the floor would impact them greater as that would be their ceiling.

As a further example the tenant writes,

Monday

5pm – much in & out in 307, door banging. 6:50pm – pound across floor then sig smoke out patio, the out of 307 again (they sometimes go in, smoke, then leave.

8pm younger man & woman crashing around 2 cigs smoked out at 8:45pm

[Reproduced as written]

In this example, the tenant could not possibly know there was a younger man and women in the apartment below, which belongs to an older couple, or that these two people specifically smoked two cigarettes or that they left at 8:45 pm. Unless the tenant was purposely watching who came and went from the unit, which is on a different floor.

I have further read the balance of tenant's notes and I find the tenant's behaviour to be alarming. Making notes when people are showering or when they come and go is not the tenant's business or following them to see where they are going. These actions appears irrational and an invasion of the other occupants privacy. I find the tenants action to be harassing and interfering with the lawful right of the other occupants causing significant interference.

I find the Notice issued on June 30, 2016, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice issued on June 30, 2016. The tenancy has legally ended in accordance with the Act.

As the landlord has accepted occupancy rent for the month of August 2016, I find it appropriate to extend the effective vacancy date in the Notice to August 31, 2016, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on June 30, 2016, is dismissed. The landlords is granted an order of possession.

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 08, 2016

Residential Tenancy Branch

