



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

1. At the start of the hearing two witnesses appeared on behalf of the tenant. The witnesses were excluded until such time called. The witnesses were not called to testify.
2. Prior to the hearing date the landlord sent in a written submission indicating the applicant was not a tenant but a sub-tenant of her tenant. I explored this matter further with the parties.

The rental unit is a two bedroom duplex. It is occupied by another tenant, referred to by initials CB, and the applicant.

The landlord testified that she signed an "Intent to Rent" form for the applicant so that he may collect shelter allowance from Income Assistance but that it was CB that permitted the applicant to move in to the rental unit and not the landlord. The landlord stated the applicant pays rent to CB but not to her. The landlord testified that she had issued two Notices to End Tenancy for Cause to the applicant and the first Notice was the subject of a previous dispute resolution proceeding where the applicant was found to be a tenant. The landlord stated that she was unable to attend that hearing but acknowledged she did not file an Application for Review. The landlord also testified that she presented the applicant with a tenancy agreement but that he refused to sign it.

The applicant testified that when he viewed the property he understood that his landlords were both CB and the landlord. The applicant testified that he usually gives his rent to CB but at times he has given it directly to the landlord. The applicant stated that he recalled signing a tenancy agreement with the landlord so that the landlord could consider him a tenant and evict him.

Given the landlord completed an Intent to Rent form indicating she was renting a unit to the applicant; the landlord has issued two Notices to End Tenancy naming the applicant as a tenant; and, the applicant was found to be a tenant under a previous dispute resolution proceeding for which the landlord did not seek review; I found that on the balance of probabilities that a landlord/tenant relationship exists between the landlord and the applicant. I informed the landlord that I would proceed on the basis the applicant is a tenant and the landlord indicated she was prepared to proceed and demonstrate that the tenancy should end for the reasons indicated on the 1 Month Notice.

The landlord also indicated that she served a separate Notice to End Tenancy to CB but that the reasons for his eviction were not relevant to the reasons for ending the tenancy of the tenant before me. The landlord also referred to the kitchen and bathroom areas in the rental unit to be "common areas". It was somewhat unclear as to whether there is a co-tenancy agreement for the entire rental unit or a tenancy-in-common. With a tenancy-in-common it is possible to end the tenancy for one tenant and not the other. Since the landlord has issued separate Notices to End Tenancy to each tenant I proceed on the basis this is a tenancy-in-common.

3. The parties were in dispute as to the date the 1 Month Notice was served upon the tenant. The landlord testified that it was served in person on June 30, 2016 in the presence of a witness. The tenant's representative stated that it was received by the tenant on July 2, 2016. In filing this Application on June 11, 2016 I am satisfied the tenant filed to dispute the Notice within the 10 day time limit in either circumstance. Had the tenant received the Notice on June 30, 2016 his deadline for disputing the Notice was June 11, 2016 since the 10th day fell on a weekend and in such circumstances the time limit for disputing a Notice automatically extends to the next business day. The tenant's representative was of the position that serving the Notice after the first day of the month invalidates the Notice. That position is incorrect. Serving a 1 Month Notice on July 2, 2016 would have the effect of extending the effective date to August 31, 2016 which is the date of this hearing. Accordingly, I find the tenant has had the benefit of occupancy until August 31, 2016 and receiving the 1 Month Notice on June 30, 2016 or July 2, 2016 is of no consequence to the tenant. Therefore, I found it unnecessary to further explore or determine whether the tenant was served with the 1 Month Notice on June 30, 2016 or July 2, 2016.
4. Finally, I noted that that the last name on the tenant's Application was spelled differently than that appearing on the 1 Month Notice. The landlord confirmed that she considered the tenant named on the 1 Month Notice and the Application to be the same person. The tenant did not raise an issue with the spelling of his last name on the 1 Month Notice. I was satisfied that the tenant knew or ought to have known that the 1 Month Notice pertains to him and the misspelling did not impede his ability to file to dispute the Notice. Therefore, I amended the 1 Month Notice to correct the spelling of the tenant's last name.

5. Given the number of preliminary issues, the limited amount of hearing time, and the multiple issues identified on the Application I informed the parties that I may have to dismiss the issues that are not sufficiently related. The parties confirmed that the issue of utmost importance was determining the fate of the tenancy. Accordingly, I proceeded to deal with the 1 Month Notice and I dismissed the other remedies sought by the tenant with leave to reapply.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated June 30, 2016 be upheld or cancelled?

Background and Evidence

The tenant moved into the rental unit in September 2015. He has been paying rent of \$475.00 on or about the first day of every month. The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause dated June 30, 2016 with a stated effective date for July 31, 2016 (the Notice).

The Notice indicates the followings reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
 - jeopardize a lawful right or interest of another occupant or the landlord.

Below I have summarized the landlord's reasons for ending the tenancy and the tenant's responses.

Unreasonable number of occupants

The landlord submitted that the tenant has permitted another person to reside in the rental unit. The landlord was of the position that only the tenants should be residing in the rental unit.

I did not request a response from the tenant with respect to this ground as I found the landlord did not present a basis for ending the tenancy under this ground, for reasons provided in the analysis section of this decision.

Unreasonable disturbance, significant interference, and putting the landlord's property at risk to the property

Under this ground the landlord submitted that the tenant has failed to maintain the rental unit so that it is reasonably clean, safe, and sanitary. The landlord stated that the "common areas" shared by the tenant and CB, namely the kitchen, living room and bathroom, are usually filthy and cluttered. The landlord also stated that the tenant has left cardboard and other flammables on the stove top, putting the property at risk. The landlord testified that CB has complained to her often about the condition the tenant leaves the rental unit and that he is unreasonably disturbed by it. In response to CB's complaints, the landlord has spoken with the tenant on a number of occasions and helped him clean up, but that the condition always deteriorates within a couple of weeks. The landlord also pointed to a large volume of newspapers on the porch and a mattress left in the backyard.

The tenant acknowledged that the kitchen is messy but was of the position that the mess is "not insanely unsanitary" since he does not have any maggots. The tenant acknowledges that he and CB have had disagreements but the tenant attributed the disputes to CB not telling him when he is coming home after being away for a couple of weeks. The tenant was of the position that if CB told him he was coming home he could make more effort to clean up. The tenant stated the mattress has since been removed from the backyard.

The tenant also pointed out that it is not just his mess and alluded to CB contributing to the mess. The landlord responded by stating any debris left by CB is construction debris since CB is repairing the property for the landlord.

The tenant also excused his lack of cleanliness as being par for the neighborhood, citing the area of the rental unit as being in the "ghetto" area of the town. The tenant was of the view that his actions have not brought the living standard down.

Illegal activities

The landlord submitted that the tenant has been drinking with and providing alcohol to under-age minors in the rental unit, in addition to using illegal drugs including ketamine. The landlord also stated that cars can be seen coming to the rental unit and then leaving a few minutes later which she attributes to drug deliveries. The landlord was of the position that doing these illegal activities puts the property and the occupants at risk. The landlord testified that she asked the tenant to stop doing such things at the rental unit and he says he will try to stop but he does not.

The tenant acknowledged using alcohol and drugs at the rental unit but claimed that he does not “act crazy” when he is under the influence. The tenant stated that CB also uses drugs but acknowledged they are of the prescription type.

During the hearing both parties were of the view that it would be beneficial for all those concerned if the tenancy were to end; however, The tenant's representative pointed out that the tenant has development disabilities; is low income; and, the vacancy rate in the area is very low. The landlord recognized during the hearing that the tenant has certain limitations and requested an Order of Possession effective at the end of September 2016 provided the tenant pays for his continued occupancy for the month of September 2016.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there is more than one reason indicated on a Notice to End Tenancy a tenancy may be ended where the landlord proves one of the reasons.

Upon consideration of everything before me, I provide the following findings and reasons.

Unreasonable number of occupants

In order to end a tenancy under this ground, the landlord must establish that the number of occupants in the rental unit is excessive. Having an additional occupant in breach of the tenancy agreement is not a basis for ending the tenancy under this ground unless that additional occupant brings the number of occupants to an unreasonable number for the property. Breaching a material term of a tenancy agreement is a basis for ending a tenancy; however, the landlord did not indicate that reason on the Notice to End Tenancy.

I heard from the landlord that there are three people living in a two bedroom duplex. I do not view this as being excessive considering this is not an unusual number of people to occupy a two bedroom unit. If the tenant was renting just a room, such as in a rooming house, I would not find two people sharing a room to be excessive as this is also common place in our society. Therefore, I found the landlord's submission did not establish that there are an unreasonable number of occupants in the rental unit and I did not consider this ground further.

Unreasonable disturbance, significant interference, and putting the landlord's property at significant risk

Section 47(1) provides that a tenancy may be ended where:

- (d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

The landlord included these grounds on the Notice issued to the tenant. Considering the kitchen, living room and bathroom are shared by another tenant/occupant of the residential property I accept that the tenant's lack of cleanliness and unsanitary standards on a recurring basis would negatively impact the other tenant's ability to use and enjoy the property in a substantial way and may be a basis for ending the tenancy under section 47(1)(d)(i) and (ii).

Under section 32 of the Act, a tenant has certain obligations to repair and maintain the property. Below, I have reproduced the relevant portion:

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Act does not define "reasonable" and I have given the word its ordinary interpretation. In law, the meaning of "reasonable" includes: rational, appropriate, ordinary or usual in the circumstances. To determine whether a unit is being maintained so that it is reasonably clean and sanitary I must consider whether the unit appears as most living accommodations are ordinarily kept. The standard is not dependent upon what the tenant considers to be clean and sanitary but what a "reasonable person" would consider ordinarily clean and sanitary. I find that applying the reasonable person test is more appropriate than relying upon the tenant's standards since a tenant having low standards of cleanliness would in effect exempt himself from the requirement imposed by the Act.

There is no exemption to the requirement imposed under section 32(2). Accordingly, it is irrelevant whether the rental unit is located in a less desirable area of town or the tenant has personal limitations in keeping the rental unit reasonably clean and sanitary. Nor, is the other tenant CB under obligation to inform the tenant when he is going to return home since the rental unit is to "maintain" a reasonable state of cleanliness.

Upon review of the photographs, I find that a reasonable person would not consider the rental unit to be sufficiently clean and sanitary. The photographs depict a badly soiled stove-top; a stove top covered in debris including flammable objects; the countertops and coffee table covered in soiled dishes, garbage and cigarette butts; broken beer bottle on the floor; a huge volume of garbage, including newspapers on the porch.

Where one tenant is unreasonably disturbed or their enjoyment of common areas is significantly interfered with by another tenant, it is expected that the landlord will take action against the

offending tenant. In this case, I heard that the other tenant, CB, has made several complaints to the tenant and the landlord about the condition of the rental unit left by CB and that the landlord has spoken with the tenant on a number of occasions in an attempt to address this problem. I accept that despite the landlord's attempts to talk to the tenant about the problem, and her efforts to help the tenant clean, the problem recurs. I make this finding considering the tenant provided a number of excuses in an attempt to justify his lack of action with respect to maintaining a reasonably clean and sanitary unit.

In light of the above, I am satisfied that the tenant's actions, or lack thereof, have unreasonably disturbed or significantly interfered with another occupant and that there is a basis to end the tenancy under this ground. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's request that I cancel it.

Illegal activity

Having upheld the Notice for the reasons given above, I find it unnecessary to further consider ending the tenancy due to illegal activities and I have not considered this ground further.

Order of Possession

Section 55(1) of the Act provides that I must provide the landlord with an Order of Possession if I uphold the Notice to End Tenancy and the Notice meets the form and content requirements of the Act. The spelling of the tenant's last name has been amended and the effective date automatically changes to comply with the Act. Accordingly, I am satisfied the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession with this decision.

Considering the landlord was agreeable to an Order of Possession effective September 30, 2016 I provide such an Order to the landlord to serve upon the tenant and enforce as necessary. However, the landlord's willingness was also conditional upon receiving monies from the tenant for his continued occupation of the rental unit for the month of September 2016. Accordingly, in the event the tenant does not present \$475.00 to the landlord for the month of September 2016, I also provide the landlord with an Order of Possession effective two (2) days after service.

Conclusion

I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it.

I have provided the landlord with an Order of Possession effective September 30, 2016. I have also provided the landlord with an Order of Possession effective two (2) days after service that she may serve and enforce in the event the tenant does not pay her \$475.00 for use and occupancy of the unit for the month of September 2016.

The tenant's requests for monetary compensation and a rent reduction have been dismissed with leave to reapply.

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: September 01, 2016

Residential Tenancy Branch