



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

Issue(s) to be Decided

Does the landlord have cause within the meaning of the *Residential Tenancy Act* for ending this tenancy?

Background and Evidence

The rental unit is a one bedroom/ one bathroom apartment in a five story, 116 unit building. It is about 660 square feet. The building and the unit were brand new when the tenant moved into it on or about March 1, 2015. The unit has a balcony and a parking space is included in the rent.

In July 2015 the unit below the tenant's reported a bed bug infestation. The landlord and the pest control company inspected all of the surrounding units, including the tenant's. They did not find any bed bugs but they found an apartment that was very full. The pest control company noted that it would have been very difficult to treat the unit if they had found bedbugs.

In August 2015 the landlord gave the tenant a letter advising her that she had to clean up her unit. An inspection of the unit was put off several times, at the request of the tenant. Often the tenant explained that she had other appointments, was ill, or had not progressed on her organizing efforts.

The tenant's response to the landlord was not particularly co-operative. For example:

"Absolutely everything you said shows no understanding at all of depression.
And your patronizing response is offensive.

How long anything takes me is not any of your business. In fact, I have only told you about my personal information to give you a context. It is unconscionable that you would deem to tell me how I should be functioning. I have specialists who have the expertise and are monitoring me and my psychiatrist expressed shock at your response when I saw him today.

I must assume that you know there are no other tenants with messy apartments. Should there be anyone, I would assume that you will be treating them the same.

You are well aware there are no bedbugs in my apartment. I won't comment further on the fire/flood platitude. If it takes me longer to settle in than you anticipate it should not rise to the order of a crime which is how you are treating it.

I have not yet looked up my rights which, it appears, I need do, since you are relying on the law with respect to timing.

I am sorry it has come to this.

Further, I would like to know with whom I am dealing? . . . Please provide the names of the decision-maker(s)."

An inspection was finally conducted on November 27. Whatever the landlord observed it did not lead to any further action.

At the beginning of 2016 the landlord asked the tenant to remove the boxes she was storing in her parking stall. After some argument the tenant complied with the request.

On August 16, 2016 the landlord and some workmen wanted to do some repairs on the balcony. The landlord's evidence is that there were so many items in the unit they could barely open the door and they could not get to the balcony door. The landlord's witness said there was a little pathway from the door into the unit and there were piles on each side. The piles were not as high as her shoulders but the pile was higher in the middle of the room.

On August 17 the landlord gave the tenant a letter which stated:

“It has come to our attention that your suite is currently virtually inaccessible due to your method of storing personal goods in the unit. This is in breach of the material term in section 14 of your rental agreement. This current arrangement of personal items in your suite also poses a serious fire hazard.

Please treat this letter as a written notice that you have 48 hours to return your suite to a reasonably clean state that allows adequate access through the unit. As this is a very serious fire safety issue and the fact that this is not your first warning about proper conduct in the building, if you do not comply you will force us to proceed with an eviction process.

Please address the situation as soon as possible.”

The unit was inspected on August 19. No progress had been made by the tenant. The landlord filed photographs that were taken at this time.

On August 23 the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The tenant was accompanied in the hearing by her community mental health caseworker. The tenant was very emotional while giving her testimony.

She testified that she is 70 years old and has been under a psychiatrist's care since 2006. She suffers from severe depression, high blood pressure, and colitis. She has a 41-year-old daughter in Ontario and a 35 year-old-son who lives in the Lower Mainland.

Prior to moving into this unit the tenant owned a three bedroom, 2100 square foot condominium. She had to sell the condo and move into rental accommodation. When she moved out of her condominium she filled three storage units with her possessions. She testified that they were stacked to the ceiling.

The storage units are expensive and she has been trying to empty them. She said this involved hauling boxes to her home, sorting through them, and hauling the contents to wherever they were being donated. Because of her age, health and emotional state this process has gone very slowly. For example, she described the difficulty she was having going through her father's belongings.

The tenant testified that she had just succeeded in emptying the last storage unit in August and that the boxes in her unit this August are not the same boxes that were in the unit a year ago. She said that the boxes on the balcony are not the boxes she had been asked to remove from the garage. They are her father's things and those boxes have been on the balcony since she moved in.

The tenant testified that she understood this was her last chance and she was prepared to do whatever was necessary to preserve her tenancy.

The tenant did not submit any evidence to show whether she had made any progress in clearing her apartment in the two months between when she was served with the notice to end tenancy and the hearing date.

The tenant's mental health worker testified that she has been working with the tenant since November 2014, before the start of this tenancy. Her mandate does not include home visits. She was aware that the tenant was struggling to clear out the storage units and was advised by the tenant that she had been served with a notice to end tenancy.

The worker admitted that she had under-estimated the amount of support the tenant required. It was only on the day of the hearing that the worker spoke to the tenant about adding the Supported Apartment Living program to her treatment program. The worker explained that this program would help the tenant create a realistic action plan, monitor her goal achievement, offer emotional support and make home visits to see how she was doing, but only very limited physical assistance. Moving boxes and hauling things for the tenant was not within the mandate of the program.

The tenant has paid the September and October rents and has received receipts that state they were accepted "for use and occupation only".

Analysis

These cases always involve balancing the tenant's need for accommodation of his or her personal difficulties and the very real risks to the neighbours posed by an apartment as full of material as the tenant's. In addition, landlords are responsible for reducing the risk of fire damage and pest infestations posed by apartments that are too full. They must take appropriate steps to protect the other tenants of a building.

The landlord has not acted hastily or arbitrarily in this matter. Their testimony is that they prefer to keep tenants if they can and their actions bear this out. It has been over a year since the first request to reduce the volume of material in the rental unit was made. They accommodated the tenant's requests for extensions of time and they did not serve

a notice to end tenancy until a year had passed and the situation had deteriorated even further.

It does not appear that the tenant understood that her tenancy could be at risk or that she had to take the landlord's demands seriously. Although I did not specifically ask her about whether she had reached out to anyone for help emptying the storage units and her apartment she did not volunteer any information on this topic nor did her e-mails to the landlord give any indication that she was actively seeking help. It is worth noting that it appears her primary objective was to empty the storage units and she was successful in achieving that objective.

It does not matter whether the items in the unit are the same or have changed over the year; the issue is whether the volume of material in the unit has changed. The evidence is clear that it has not.

The program the tenant's mental health worker proposed might have been helpful in the past but it is too late for this tenancy.

I find that the landlord has established the grounds stated on the notice to end tenancy and that the 1 Month Notice to End Tenancy for Cause dated August 23, 2016 is valid. The tenant's application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52.

Section 68(2) (a) allows an arbitrator to order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy. In light of the tenant's personal situation and, in particular, the difficulty she will have packing and moving out of the rental unit, I order that this tenancy will end December 31, 2016 and grant the landlord an order of possession for that date. The tenant must pay the December rent when it is due and, if she does not the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent.

Conclusion

For the reasons set out above the tenant's application is dismissed and the landlord is granted an order of possession effective **1:00 pm, December 31, 2016.**

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: November 10, 2016

Residential Tenancy Branch