



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "Act").

The tenant, the tenant's advocate and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing the landlord confirmed receipt of the tenant's application for dispute resolution package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and the tenant was duly served with landlord's evidence package.

Preliminary Issue – Late Evidence

The tenant testified that on January 9, 2017, he delivered an 8-page evidence package to the landlord and Residential Tenancy Branch. The landlord confirmed receipt of the evidence package but contended this evidence should not be accepted, as it was late.

The tenant testified that he attempted to deliver the evidence package to the Residential Tenancy Branch ("RTB") between December 22, 2016 and January 2, 2016 however both RTB community outreach offices he visited were closed.

Rule 3.14 of the RTB *Rules of Procedure* establishes that the respondent and the RTB must receive documentary evidence not less than 14 days before the hearing. If the evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made.

The evidence package was served just one day prior to the hearing and the tenant did not show this evidence was new and unavailable at the time the application was made on December 2,

2016. For these reasons, I have not relied on the tenant's 8 page evidence package to form any part of my decision.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, witness statements, incident reports, logs, letters, medical reports and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

As per the testimony of the parties, the tenancy began on March 1, 2015 on a month-to-month basis. Rent in the amount of \$320.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$160.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated November 25, 2016. The 1 Month Notice has an effective date of December 31, 2016. The ground to end the tenancy cited in the 1 Month Notice is;

- the 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

Landlord

The landlord testified that the primary reason for issuing the 1 Month Notice was in relation to a November 7, 2016 altercation that occurred between the tenant and another occupant (the "occupant").

The occupant testified that on November 7, 2016 while sitting outside the tenant approached him. The two engaged in a heated verbal altercation, which led to the tenant punching and kicking the occupant in the face. The occupant testified that his glasses were broken in this incident. Later this same evening while in the staff office, the tenant pushed the occupant to the ground. The occupant testified that he has "fear of this man." A police report was filed. The landlord has provided photographs depicting the occupant's injuries.

The staff member who was working on November 7, 2016 testified that he observed the tenant yelling and screaming at the occupant outside and directed the tenant to his unit. Later that same day the staff member was in his office with the occupant when the tenant appeared and

began yelling at the occupant. The staff member witnessed the tenant push the occupant to the ground. The staff member observed that the occupant hit the edge of the drawer while falling to the ground. The staff member directed the tenant to his unit. The staff member testified that the tenant came by the office later that evening and apologized for his actions.

The landlord also testified to and provided witness testimony in relation to previous incidents involving the tenant.

Tenant

The tenant prepared a written statement, which was read aloud by the advocate during the hearing.

The tenant indicates that he approached the occupant because the tenant was smoking below a non-smoking sign posted above him. It is the tenant's position that the occupant was disrespecting the building rule of no smoking which in turn disrespected him. The tenant indicates that the occupant jabbed at him first and in response the tenant kicked the occupant, which knocked the occupant's glasses to the ground. The tenant recalls the occupant stood and raised a fist, and in defense the tenant punched the occupant in the face. The tenant acknowledged he yelled at the occupant at which time the staff member directed him to his unit. The tenant admits that later that same evening he attended the staff office and after seeing the occupant he began swearing at him. The two engaged in another heated verbal exchange in which the two came face to face. When the occupant's chest touched the tenant's chest the tenant pushed the occupant. The tenant stated the occupant landed in a chair. The tenant later apologized to the staff member.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the 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. The onus is on the landlord to prove the reasons behind the notice. The landlord provided evidence in the form of photographs, witness statements, incident reports, logs, warning letters, medical reports and testimony.

The tenant does not dispute the altercations in which he kicked, punched and pushed the occupant. The tenant suggested these actions were in response to the occupant smoking and in both instances at the response of the occupant's first physical move. The occupant and staff testimony have persuaded me on the balance of probabilities that the tenant was the instigator in both instances. Based on the evidence presented I am satisfied that the occupant suffered injuries as a result of these altercations. For these reasons I find the tenant seriously jeopardized the health or safety of another occupant and therefore dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective **two (2) days after service on the tenant**.

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: January 16, 2017

Residential Tenancy Branch