



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The named landlord also attended and gave independent affirmed testimony. The tenant and the landlord's agent were also given the opportunity to question each other and the landlord.

The conduct and order of testimony was explained to the parties at the commencement of the hearing. During cross examination, the tenant asked questions of the landlord's agent and then disagreed with the testimony. Similarly, when the landlord's agent cross examined the tenant, the landlord's agent disagreed with the answer given. On both occasions, I reminded both parties that cross examination is an opportunity to ask questions, not to argue with the other party with respect to the answers given. The landlord's agent was unhappy with that reminder indicating that the tenant had been given 45 minutes to provide testimony, however the landlord's agent was also asked on more than one occasion if the landlord's agent had anything else to add.

Also, during the course of the hearing, the tenant advised that he found the landlord's evidence package on the floor outside the rental unit on April 12, 2017. The landlord's agent advised that it was posted to the tenant's door on April 12, 2017. The tenant did not oppose the inclusion of that evidence, and all evidence provided has been reviewed and is considered in this Decision. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy given by the landlord?

- 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 in this particular rental unit began on February 4, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$704.00 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$335.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within an apartment complex and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that on March 2, 2017 the landlord's agents served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided by the tenant and it is dated March 2, 2017 and contains an effective date of vacancy of April 30, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - 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.

The landlord's agent testified that numerous complaints have been received of threatening and intimidating behaviour of the tenant, to the extent that the landlord is fearful of losing other tenants. Copies of Incident Reports made by the Resident Manager have also been provided, as well as letters from other tenants.

One particular neighbouring tenant has had issues with the tenant since the tenant moved onto that floor from another rental unit within the complex, and fears for his life. One of the letters provided is from that tenant and is dated March 2, 2017 which states that the writer is upset the landlord has not done enough after the tenant threatened to break down the writer's door. Police have been called 3 or 4 times due to the tenant's threatening behaviour, but no charges have resulted.

Another letter from a neighbouring tenant is not readable, however the landlord's agent read it in testimony and stated that the writer witnessed the tenant yelling at another accusing theft, and the writer felt very afraid and annoyed. The letter also states that the incident was not the first fight between the 2, but the worst and that the writer does not feel safe and is afraid to go outside. The landlord's agent testified that the tenant is a big man, and the neighbouring tenant is a small woman, and when the tenant gets upset, he is scary.

A third tenant is afraid of the tenant due to the tenant yelling at another. The landlord's agent is not certain of the severity. The tenant is very loud when he gets upset and the landlord's agent has seen it first-hand in the landlord's office.

The landlord's agents have tried to go through certain steps to alleviate problems between the tenant and the neighbouring tenant, including changing locks to the tenant's door. No written notices have been given to the tenant, but the owner of the landlord company and the landlord's agent have given the tenant verbal warnings of a breach, and this has been going on for a long time.

The landlord named in the Tenant's Application for Dispute Resolution testified that she is the Resident Manager, along with her husband, and has been for about 4 ½ years. She further testified that the neighbouring tenant, with whom the tenant has had difficulties, avoids the tenant after hearing a lot of accusations. He told the landlord that he avoids the elevator in an effort to avoid the tenant and takes the stairs.

The parties had been to Arbitration previously, and there have been no verbal or written notices to the tenant since then. The tenant is loud, aggressive and intimidating, and the landlord knocks on his door asking why he does that, but has not given any warnings in writing or verbally.

The tenant testified that he talked to the District Manager of an advocacy service and was advised that the tenant had 10 business days to dispute the notice to end the tenancy. After talking to personnel at the Residential Tenancy Branch, the tenant learned that it was not business days and was told to file the application for dispute resolution right away, and he did so.

The tenant originally rented a unit within the building but the roof fell in causing a flood. The landlord gave the tenant an eviction notice and a hearing was held about 14 months ago. The notice to end the tenancy was cancelled.

The tenant has been living in this rental building for 7 years, and the landlord placed the tenant in this particular apartment. The neighbouring tenant was a charming man and a friend. However, the tenant believes the neighbouring tenant stole keys and returned them the next day while the tenant was at the dentist. The neighbouring tenant was charged with a sexual assault and threatened to kill the tenant and everyone heard that. He said he was going to hunt down the tenant, and the resident manager was trying to calm him down. The tenant was in fear for his life.

In early December, 2016 \$350.00 of the tenant's Christmas money disappeared and the tenant asked the landlord's agent to change the locks, but she said it had already been done. The

tenant advised that it hadn't been done, so the landlord's agent said she would call the Resident Manager's husband, who put another butterfly lock on the door. The Resident Manager's husband said he didn't get paid enough to change locks for the landlord and he'd change it when the tenant moves out. The tenant didn't know that the work order had been approved to change the locks in July, and if they had been done, the tenant would not have lost the \$350.00.

The tenant further testified that he has never received a written or verbal warning, and doesn't recall the Resident Manager talking to him at all. No one has brought any disturbances to the tenant's attention. If there had been any verbal or written notice of the tenant's conduct being out of order, he would definitely take that very seriously, and it never happened.

Analysis

Firstly, with respect to the tenant's application for an order seeking more time to dispute the notice to end the tenancy, the tenant had a support worker to assist him during the hearing, and another support person from whom the tenant sought advice and was told that the law required the tenant to dispute the notice within 10 working days.

The *Residential Tenancy Act* states that a tenant must dispute such a notice within 10 days of service or deemed service. The landlord's agent testified, and has provided proof that the tenant was served with the notice on March 2, 2017 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 5, 2017. The tenant filed the application for dispute resolution on March 16, 2017, one day late.

The tenant was accompanied at the hearing by a support worker who assisted the tenant in presenting his case, and I am satisfied, having heard the tenant and his difficulty in remaining focussed, that the tenant was given incorrect information with respect to the time limit. In the circumstances, I find that justice would not be served if the tenant's application for more time than prescribed to dispute the notice was not granted for a one-day extension.

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 given in accordance with the *Residential Tenancy Act* which can include the reason(s) 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 but does not contain the name of the landlord. The *Act* specifies that it must be dated and signed by the landlord, which I find that it is. The reasons for issuing it are in dispute.

I have reviewed the Incident Reports and letters from other tenants, and considering that the incidents describe the tenant as "out of control" and loudly yelling and continuing to rant, and considering that police have been called for such disturbances, I find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In the

circumstances I find that the landlord had cause to issue the notice, and the tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant the Order of Possession in favour of the landlord.

At the end of the hearing, the landlord's agent advised that the landlord would be content with an effective date of vacancy of May 31, 2017 if an Order of Possession were to be issued. Therefore, I grant the Order of Possession effective that date at 1:00 p.m.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective May 31, 2017 at 1:00 p.m. and the tenancy will end at that time.

This order is final and binding and may be enforced.

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 21, 2017

Residential Tenancy Branch