



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

Both parties attended this hearing and were given an opportunity to make submissions, provide testimony. An advocate was present on behalf of the tenant. The landlord's 2 representatives were present to give submissions. The landlord's confirmed their receipt of the tenant's Application for Dispute Resolution. The tenant had not received the landlord's evidence for this hearing. Prior to the outset of the formal hearing, the parties agreed that the residential tenancy agreement and notice to end tenancy in the landlord's materials could be relied on as evidence in this hearing.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on March 1, 2013 as a 3 month fixed term and continues as a month to month tenancy. The rental amount of \$356.00 is payable on the first of each month. The landlord continues to hold a security deposit of \$360.50 paid by the tenant in November 2012.

The landlord testified that for an extensive period of time, the tenant has been urinating and smoking in the elevator. As well, the landlord testified that she uses abusive language towards staff in this residence. The landlord's staff member testified that she has spoken to the tenant on at least 6 occasions with regard to these behaviours. The landlord's staff member testified that she could not provide the dates that she spoke to the tenants nor the exact nature of the conversations.

The landlord testified that cameras have been installed to ensure that the elevators are safe and clean. She testified that she has seen the tenant urinating and smoking in the elevator. Copies

of video or photographic evidence were not submitted by the landlord for this hearing. The landlord testified that, after the tenant failed to alter her behaviour in the residence, the landlord issued a 1 Month Notice to End Tenancy for Cause citing as the reason that,

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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord submitted that the urination and smoking in the elevator were illegal activities.

The tenant testified that she did not urinate in the elevator. She also testified that she did not commit any illegal activity. The tenants' advocate submits that the landlord has not met the burden of proving the tenant has committed illegal activity by the tenant and that, in fact, the landlord did not have any proof of the tenant's behaviour as described by the landlord's representatives.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice and the end of tenancy based on the grounds supplied. It is the landlord's obligation to show, on a balance of probabilities, why the tenancy should end. In the case of a 1 Month Notice to End Tenancy for Cause, the landlord must *prove* the elements relating to the grounds given on the notice. In this case the landlord is obliged to prove that the tenant engaged in illegal activity as this is the only cause for the end of tenancy submitted by the landlord in their application.

The party alleging the illegal activity has the burden of proving that the activity was illegal and should be prepared to establish the illegality by providing to the arbitrator and to the other party a copy of the relevant rule or legislation in accordance with the Rules of Procedure. The landlord relied on the ground for cause that the tenant has engaged in **illegal activity** that has damaged the landlord's property; affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or that she jeopardized a lawful right or interest of another occupant or the landlord. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord presented insufficient documentary submissions beyond the residential tenancy agreement and the notice to end tenancy. The landlord did not supply evidence from the camera, nor a log or other documentation showing that the tenant has engaged in any form of illegal activity. The landlord did not prove that the other occupants are affected; the landlord did not prove the extent of damage to the landlord's property; and the landlord did not prove jeopardy that would attach to the activity as it affects the landlord or other occupants. I find that the landlord submitted insufficient evidence to support their claims regarding the tenant's behaviour in the residence. Furthermore, I find that the landlord gave insufficient evidence of illegal activity.

Based on the lack of reliable evidence submitted by the landlord, I grant the tenant's application to cancel the notice to end tenancy.

Conclusion

I grant the tenant's application to cancel the notice to end tenancy. The tenancy shall continue.

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: June 08, 2017

Residential Tenancy Branch