



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.

An agent for the landlord and the tenant attended the hearing and the tenant was accompanied by a legal advocate. The parties each gave affirmed testimony, and each called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give closing submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, it was agreed that the tenant filed the application for dispute resolution within the time prescribed, and no additional time is sought.

Issue(s) to be Decided

Has the landlord established that the One 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 began on January 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$585.00 per month is 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 \$295.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 38 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on May 31, 2017 the landlord's agents served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental

unit. A copy has been provided for this hearing and it is dated May 31, 2017 and contains an effective date of vacancy of June 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;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant.

The landlord's agent testified that its issuance was as a result of a single incident between the tenant and the building manager, who has since refused to continue to work in the building, not feeling safe around the tenant. On May 26, 2017 the building manager went to the tenant's door to talk about a locker the tenant had used to store things in. The tenant shut the door, opened it again and swore at the building manager, then followed her. The tenant was angry and the building manager asked him to stop. A copy of a letter from the building manager has been provided for this hearing. The landlord's agent testified that the incident was reported to police on May 30, 2017.

There was no illegal activity, and the landlord's agent testified that the box was checked on the form as a result of an explanation found on the Residential Tenancy Branch website and a policy guideline stating that such activity may include acts prohibited that may affect the property. Also, other tenants have complained about the tenant harassing them, although there were no direct threats reported.

Along with the One Month Notice to End Tenancy for Cause, the landlord served the tenant with a letter and a Mutual Agreement to End Tenancy effective July 31, 2017 to give the tenant an additional opportunity to find alternate accommodation if he agreed to end the tenancy. The landlord's agents didn't think it was necessary to make it tough for him so that's the route they took.

The landlord's witness testified that she was the building manager in May, 2017 and had been for just over a year. The witness was bringing in a new tenant who had picked out a locker, but it was full. The witness recognized the folded boxes to be those of the tenant and the witness couldn't remember if that locker had been assigned to him or if the witness had made a mistake. The witness went to the tenant's apartment, knocked on the door and asked if he had taken the locker. The tenant said that he had and confirmed that it had not been assigned to him. He slammed the door hard in the witness' face then opened it and yelled profane names at the witness. The witness continued on her way and told the tenant to stop following. However he continued, but then stopped. The witness was intimidated, scared, and physically upset. The tenant is a big man.

Prior, the witness and the tenant had a good relationship and very open communication and the witness was shocked at the tenant's response and quick temper change when the witness went to his apartment.

Immediately after the incident, the witness sent an email to the landlord's agent, and the maintenance man told the witness to stay away from that building, that he'd take care of anything that needed to be done there. The witness now manages another building. The witness did not call police.

The tenant testified that on May 26, 2017 around 6:30 p.m. the building manager pounded on the tenant's door. The tenant was alarmed, and opened the door. The building manager asked if the tenant had taken over a storage room on the 2nd floor, and the tenant agreed that he had because it was the only single one available and had given up 2 previous lockers. The building manager was adamant that the tenant need to ask for assignment, but there's only 1 locker. The tenant did not threaten the building manager or jeopardize her safety and denies leaving the rental unit to go after her.

Pre-written notes signed from other tenants have been provided as evidence that the tenant is not threatening or intimidating to other tenants.

The tenant's witness testified that she was visiting the tenant on May 26 when they heard someone pounding loudly on the door. The witness also resides in the rental complex, has heard the knock before and recognized it as being the building manager. The tenant opened the door, and the building manager was upset about collapsed boxes in an empty locker and accused the tenant of taking it without permission. The parties both raised voices and the building manager was very accusatory. She also bugged him about a recent suite inspection. The tenant told her to leave him alone and closed the door. The tenant didn't open the door again.

The witness has also been badgered by the building manager entering the apartment and opening cupboards without permission, and being very intrusive.

Analysis

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.

In this case, there has been no criminal activity, and therefore that reason, being one contemplated by the *Act*, has not been established.

The first reason(s) for issuing it are:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord relies on a single incident to check off boxes on the form, and because the building manager has refused to return to the building, the landlord feels the tenancy should end. The parties and the witnesses have very different versions of what exactly took place. The landlord also offered to allow the tenancy to end a month later than the effective date of the notice to end the tenancy. Therefore I find it difficult to find that any interference, disturbance or lawful right of the landlord's agents were not, of this single incident sufficient enough to qualify as significant or serious enough to warrant ending a tenancy after 4 years. I also consider that the landlord's witness, the building manager who was involved in the incident testified that there have been no previous issues or disturbances with the tenant.

In the circumstances, I am not satisfied that the landlord has established the reasons for ending the tenancy and the One Month Notice to End Tenancy for Cause is cancelled.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 31, 2017 is hereby cancelled and the tenancy continues.

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: August 11, 2017

Residential Tenancy Branch