



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding GAREB HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause.

The Tenant's agent said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 25, 2017. Based on the evidence of the Tenant's agent, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started in April, 1994 as a month to month tenancy. Rent is \$367.09 per month payable on the 1st day of each month. It is unknown if the Tenant paid a security deposit.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 18, 2017 by personal delivery at the Hospital on July 24, 2017. The Effective Vacancy Date on the Notice is August 31, 2017. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants and the Tenant has put the landlord's property at significant risk.

The Landlord said there were three main reasons or incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). On July 16, 2017 the Tenant had a fire in her unit on the stove. The Landlord said another tenant S.B. saw the situation and he entered the Tenant's unit to help the Tenant and put the fire out. The Landlord said the Tenant was found sitting in the kitchen looking at the fire and doing nothing to correct the situation. The Landlord said if tenant S.B. had not entered the unit, put the fire out and assisted the Tenant out of the rental unit there could have been very serious damage to the rental complex and to the health and safety of the Tenant and other tenants. The Landlord said this was a very serious situation and she believes it could happen again as the Tenant is 83 years old and may not be able to care for herself anymore. The Landlord continued to say she likes the Tenant and the Tenant has been a good tenant over the years but the Landlord believes the Tenant need more care and should not live in an unassisted living situation. The Landlord said she would call S.B. as a witness to confirm the incident later in the hearing.

2) On July 17, 2017 the Tenant returned home from the Hospital after the fire incident and she fell in her rental unit and was unable to get up. Again tenant S.B. heard the Tenant shouting and he entered the Tenant's rental unit and assisted the Tenant to the ambulance. The Landlord said this incident again showed that the Tenant was unable to care for herself and needed assistance to get control of the situation. The Landlord continued to say this may happen again and cause another fire or cause serious injury to the Tenant. The Landlord said again the Tenant needs a living situation with help so that she is safe and the people around her are safe. Again the Landlord said witness S.B. will be called to confirm this incident.

3). The Landlord said the third situation is the Tenant is a hoarder and this makes her rental unit a potential fire hazard and because the Tenant does not clean well there has been a bug issue. The Landlord said a pest exterminator was called in for bed bugs but there were no bed bugs found. The Landlord said the Tenant's rental unit is cluttered and dirty and represents a fire and cleanliness issue for both the Tenant and the other tenants in the complex. The Landlord said she will call two additional witnesses S.M. and C.B. to address this issue.

The Landlord summarized her opening remarks by saying they have had a good relationship with the Tenant but the Tenant has health issues and she has reached the age that the Tenant requires more help in day to day living. The Landlord said the Tenant has put the safety of other tenants at risk and the Tenant has put the rental complex at risk because of the fire. The Landlord said it is time for this tenancy to end and for the Tenant to find a home with assisted living for her own and for others safety.

The Tenant's agent B.R. said she is a professional social worker for the Health Authority and she has worked with the Tenant for a number of years. Further B.R. said she works primarily with older people and she helps the elderly stay in their homes in a safe manner as long as it is reasonable. R.B. said that the Tenant is functioning well as an independent elderly person living on her own. B.R. said that the Tenant is not a hoarder and that the agent B.R. has had lots of experience with hoarders. Further B.R. said the Landlord has not provided any evidence that supports her claim that the Tenant is a hoarder. The Tenant's Agent said the Tenant has a cluttered rental unit and there are some cleanliness issues but she is working with the Tenant to correct these problems. B.R. said she has a team of care workers including an RN nurse and care givers that come to the Tenant's rental unit 4 times a day to administer meds, cook, clean and just check up on the Tenant. B.R. said she believes the Tenant is functioning well with this support team.

The Tenants agent B.R. said that she understands the concern over the fire incident but it was cause by a new health condition that the Tenant has developed. The agent said the condition was not diagnosed on the July 16, 2017 visit to the hospital after the fire incident but the Tenant was diagnosed later with the initial stages of diabetes. The agent B.R. said she was directly involved with the Tenant's diagnoses for diabetes and in the Tenant's treatment. As a result B.R. said the fire incident and the falling incident on the next day, July 17, 2017 were caused by an undiagnosed diabetic episode. B.R. said the Tenant is now on treatment and should not have these kinds of incidents again. The Tenant's agent said anyone can have a new medical issue affect their actions and it should not be grounds for an eviction. B.R. said the Tenant has four care giver visits a day, she now has a life line alarm system on her person and she is being treated for diabetes. The Tenant's agent said there have been no other incidents since July, 2017. B.R. said it is her professional opinion the Tenant is able to live in this situation safely on her own and she should not be evicted for a health event that could happen to anyone.

The Landlord called S.B. as a witness. Witness S.B. started his affirmed testimony by saying that he heard the fire alarm in the Tenant's unit he ran in and saw the Tenant sitting and staring at the fire on the stove. He said he put the fire out and removed the Tenant from the unit. The witness S.B. continued to say the unit was filled with smoke and the flames were a foot or more high on

the stove. The witness said he used to be a volunteer fireman and this was a serious situation. The witness S.B. said he put the fire out and made sure the area was safe so he did not call the fire department as he had handled the situation. Witness S.B. said he was very concerned that the Tenant did not do anything about the fire and she did not react to the fire. S.B. said this was a dangerous situation.

Further S.B. said the next day he heard the Tenant screaming. The Witness S.B. said he went to the Tenant's unit and found her on the floor unable to get up. Again he helped her and they called the ambulance for the Tenant. S.B. continued to say the Tenant's rental unit is cluttered, dirty and the Tenant is always asking for help with day to day things like opening jars and fixing her TV. Witness S.B. said he believes the Tenant needs more help than is available in this rental complex. S.B. continued to say the care worker that visit the Tenant are not doing their jobs because many times they come and are gone in less than 5 minutes. He does not believe the care workers do much if any cleaning or cooking for the Tenant. The Witness S.B. said he is very concerned about his safety and the safety of the rental complex because of the incidents with the Tenant.

The Tenant's agent B.R. asked the witness S.B. if the Tenant is still asking for help since the July, 2017 incidents. The witness S.B. said there have been a few requests from the Tenant but they are less. One incident to fix her TV and the other was when the ambulance was called.

The Tenant said the ambulance call was made when she used her life line when she fell and was scared but she said it was alright and nothing happened.

The Landlord called her second witness C. B. The witness C.B. gave affirmed testimony saying that the Tenant's rental unit smells of urine and the unit is very dirty with piles of unwashed cloths on the floor. Further the witness said the Tenant argues with other tenants and has accused the Landlord of entering the Tenant's unit illegally. The witness said they entered the Tenant's unit when the Tenant asked them to clean it while she was in the hospital. The witness said she has known the Tenant for many years and she believes the Tenant needs to move to an assisted living situation.

The Landlord called her third witness S.M. Witness S.M. said she works for the Landlord and she was present at the fire incident of July 16, 2017. The witness S.M. said she was surprised that the Tenant seemed normal waiting for the ambulance but the Tenant had no recollection of the fire or what had happened. The witness said she took photographs while they were in the unit and the Landlord has submitted these pictures into evidence. The witness S.M. said the Tenant's unit is in worse condition now than before the fire incident.

The Tenant's agent B.R. said in closing working with the Tenant has been a good experience as the Tenant is responsive to ideas and will work with the care giver team. B.R. said she works for the health unit with elder persons and this is not a situation that requires assisted living accommodation. The agent B.R. said the Tenant can continue to live in this unit with the support of the care giver team and she will not put the unit or other tenants at risk now that her diabetes is being treated. As well there is enough support for the Tenant now that the neighbours do not need to feel that they need to help the Tenant with cleaning or other duties. The Tenant's agent B.R. said she believes the Tenant should not be evicted because of a single health incident that could happen to anyone at anytime.

The Landlord said in closing that she believes the Tenant is a safety risk to herself, to the property and to the other tenants. The Tenant and her agent did not provide any medical evidence to prove the Tenant's medical condition is in control and there is an ongoing risk because the Tenant is a hoarder. The Landlord requested an Order of Possession for the end of December, 2017 if the Tenant's application is not successful.

The Tenant's agent said she would assist the Tenant if the Landlord's eviction was successful.

Analysis

It is apparent from the testimony and evidence submitted that this situation is a long standing tenancy with a good relationship between the parties. The Landlord is concerned for the Tenant's safety, the Landlord's property and for the health and safety of other tenants in the complex. The Landlord's concerns are the result a fire incident in the Tenant's rental unit. As well the Landlord believes that the Tenant's health may be failing her resulting in the Tenant's inability to care for herself in a safe manner. These are reasonable concerns given that the Tenant had a fire in her rental unit and she did not deal with it. Thankfully another tenant S.B. put fire out and assisted Tenant to safety. A landlord must deal with a fire incident in a serious manner so that the other tenants are safe and the property is protected. In this situation the Landlord issued a Notice to End Tenancy as the method to deal with the potential risk to the other tenants and the property. The Landlord requested to end the tenancy to remove the risk perceived by the Tenant living in the rental complex.

The Tenant's agent said the incidents of the fire and the Tenant falling down were both caused by the Tenant being untreated for diabetes. The Tenant has now been diagnosed with diabetes and is treated for the condition. The Tenant's agent said as the Tenant is treated now she is not a risk to rent complex or the other tenants in the rental complex. The Tenant's agent said anyone can have a medical issue that results in the inability to deal with a situation. The Tenant's agent continued to say she is a professional social worker working for the Health Authority and it is her opinion the Tenant is able to live safely in this rental unit with the assistance of the care giving team. The Tenant's agent B.R. said she believes the Tenant is not a risk to the rental complex or the other tenants and she is capable of living in an independent living situation. Agent B.R. said a health issue can happen to anyone at anytime and it is not grounds for an eviction. The Tenant and the Tenant's agent B.R. requested the 1 Month Notice to End Tenancy be cancelled and the tenancy continue as indicated in the tenancy agreement.

Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. The landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk. Further the intent of Section 47(d) is that a tenant willfully or consciously acted in a manner that put the Landlord's property and other tenants at risk. In this situation I accept the professional opinion of the Tenant's agent that the Tenant's medical condition was the cause of the fire incident and the Tenant falling the next day. I further accept the Tenant's agent B.R. testimony as a professional health worker that this type of incident could happen to anyone at anytime. Given that the Tenant had little or no control of the medical issue and it could happen to anyone; I find the Tenant has established grounds not to be held responsible for the fire incident on July 16, 2017 and the falling issue on July 17, 2017. Consequently I cancel the Notice to End Tenancy for Cause dated July 18, 2017 and I order the tenancy to continue as stated in the tenancy agreement.

Further I find the Landlord's evidence and testimony about the risks of the Tenant's alleged hoarding does not met the level required to prove a safety risk to the property or other tenants at the rental complex. I dismiss this reason in support of the Notice to End Tenancy.

In addition I took note of witness S.B.'s testimony that the care givers may not be carrying out their duties as contracted. Witness S.B. said the care givers sometimes only stop at the Tenant's unit for 5 minutes or less. From the Tenant's agent's B.R. testimony this is not the level of care the Tenant should expect from the program. I would encourage B.R. as the team lead of the Tenant's care team to look into the care given to the Tenant and correct any deficiencies.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated July 18, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 12, 2017

Residential Tenancy Branch