



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

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

The tenant attended the hearing, with another person to assist. The landlord was represented at the hearing by an agent, and called 2 witnesses. The parties and the witnesses each gave affirmed testimony and the parties were given the opportunity to question each other and make 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.

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 July 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable on the 1st day of each month and there are no rental arrears. During the tenancy the landlord collected a security deposit in the amount of \$275.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite, and a copy of the tenancy agreement has been provided for this hearing. The landlord's agent is a property manager for the owner, and does not reside on the rental property. The upper level of the rental home is also tenanted.

The landlord's agent further testified that on December 28, 2017 the tenant was served with a One Month Notice to End Tenancy for Cause by another agent of the landlord who posted it to the door of the rental unit. A copy has been provided for this hearing and it is dated December 28, 2017 and contains an effective date of vacancy of January 31, 2018. The reason for issuing

it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The key reason for issuing the notice is because of additional occupants, and there has been more than one, and each time the landlord gave the tenant an opportunity to apply for a tenancy of the additional occupant so the landlord could check references and obtain information about the occupant. The tenant did not at any time ever have the occupants apply and the landlord has had significant difficulties with the occupants regarding their behaviour and interactions with the neighbouring tenant in the upper level. Police incidents have also occurred.

In addition, the neighbouring tenant in the upper level has the right to the carport to park his car and storage, however the tenant has been using the carport and was given multiple opportunities to remove his belongings from the carport. The tenant promised to but the landlord had to hire someone to remove the items. The tenant is now using it again, and another visitor or occupant of the tenant has been parking there.

The landlord has also provided copies of breach letters sent to the tenant. The first is dated October 16, 2017, which speaks of many issues, including having additional occupants. The second letter is dated November 6, 2017, and another dated December 5, 2017. The tenant has not abided by the letters, breaching the tenancy agreement, and the landlord seeks an Order of Possession.

The landlord's first witness is also a property manager for the owner of the rental home and has worked in that capacity since the summer of 2017, but does not live on the property.

The witness testified that he served the One Month Notice to End Tenancy for Cause on December 28, 2017 by posting it to the door of the rental unit. The witness also sent 3 breach letters to the tenant by regular mail.

There were a few issues with respect to ending the tenancy: unauthorized occupants, rubbish and junk and the tenant's belongings in the carport, taking up a fair portion of it, unclean and unhealthy condition of the rental unit, and concerns of drug use. The landlord's agents have received emails from the neighbouring tenant in the upper level of the rental home, copies of which have been provided for this hearing, which also complains of screaming and yelling.

The landlord's agents gave the tenant a deadline to have an additional occupant move from the rental unit, and immediately following her departure, the tenant's brother moved in. The witness believes the brother was there from November 1, 2017 to December 25, 2017 or perhaps later.

The landlord's second witness (DE) testified that he sent several emails to the landlord about noise from the basement suite, and testified that his 4-year old son is afraid due to the yelling and fighting going on in the basement suite.

The witness' tenancy agreement includes the carport, in which the witness also has storage access, but is unable to access it or park his car due to couches, mattresses and garbage placed there by the tenant in the basement suite. The witness gave photographs to the landlord, and asked the tenant in the basement suite several times to remove his items, but he refused.

The witness also testified that the tenant in the basement suite had his brother living there for quite awhile and a lady also lived there. The witness has kept a log about when people have stayed and when the witness was disturbed.

Incidents have also happened recently where police were called, and the witness testified that if the tenant in the basement suite does not move out, the witness will have to move out after living there for 7 years.

The tenant testified that he is looking for another place to live but keeps to himself and keeps up with the rent. The landlords never return the phone calls of the tenant or his outreach worker.

The tenant further testified that the entrance to his rental unit is in the carport, and all he has in the carport is pop bottles and recycling. The tenant asked the landlord for space for such storage and they said they'd get back to the tenant about it but never did. The neighbouring tenant in the upper level can park his car in there and there's nothing blocking his access to storage. The tenant wants the landlord to advise what to do with recycling.

The tenant admits that a girl stayed there for some time, and in November, 2017 the tenant's brother moved in, but on December 5, 2017 the tenant received a letter from the landlord and the brother moved out a few days later. Currently no one else lives with the tenant.

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, the reason for issuing it is in dispute: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The issue before me is not whether or not the tenant will behave himself in the future and abide by the tenancy agreement and the *Residential Tenancy Act*, but whether or not the landlord had cause to issue the One Month Notice to End Tenancy for Cause.

The tenant does not deny any of the allegations or that any of the breach letters were received. I accept the testimony of the landlord's agent and witnesses, and I find that the landlord had cause to issue the One Month Notice to End Tenancy for Cause, and I dismiss the tenant's application to cancel it.

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. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

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: February 05, 2018

Residential Tenancy Branch