



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated November 30, 2017 to be effective January 2, 2018 and the tenant confirmed it was served by posting it on the door. He said he received it December 1, 2018. I find the effective date of the Notice is automatically corrected by section 53 of the Act to January 31, 2018 as pursuant to section 47(2) of the Act, a one month notice to end tenancy must give a full month's Notice and end the tenancy on the day before the day in the month that rent is payable. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated December 8, 2017 to the landlord's office and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 1, 2014, it is a month to month tenancy, rent is \$666 a month including internet and a security deposit of \$321 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by him:

- (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- (ii) Has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- (iii) has put the landlord's property at significant risk.

b) The tenant has also breached a material term of the tenancy agreement.

The landlord provided in evidence a number of reports/cautions regarding incidents of noise in 2015, a fine levied against the tenant for a bylaw noise violation in 2016 and accounts of noise violations in 2017 when the landlord had to call the police to deal with the tenant. The incident that occurred just prior to the Notice to End Tenancy being issued was reported as the tenant banging on the shelter doors and windows and shouting at the staff. The police had to be called twice. Their security camera documents the incidents. The shelter is located on the lower floor of the building and the staff were alarmed for their safety.

The tenant said there is some truth to the reports but they are grossly exaggerated. He said he is diagnosed with mental health disabilities and is treated with medication. Sometimes he has manic or erratic outbursts beyond his control. He supplied a doctor's note attesting to his condition and the necessary medication. He said the building is old and creaky, the shelter clients must be in bed and lights out by 10p.m. and he often has a friend over for a visit to listen to music. He denies stomping around and points out other neighbours create noise and have parties. He said the staff were not at risk during the last incident as they are behind two doors, one glass and one steel. He said he was celebrating his first old age pension cheque and his mood was partially fueled by too much alcohol. In the hearing he said he also was off his medication at the time but he meant no harm and was just being foolish.

The landlord said that they are also extremely concerned about the risk to the building and safety of other tenants which is caused by the tenant continuing to smoke in the building. Although he has had many warnings, he persists. She said there is an overwhelming smoke smell emanates from his unit and when she enters, he runs out the other side smoking a cigarette. The tenant said when he first rented, he was told by the previous property manager that he could not smoke inside the unit but it was okay outside with a can for butts. The landlord denies this and states he was told there was no smoking on the property and the neighbours are not permitted to smoke on the property either.

The tenant said he only got the recent evidence of the landlord a few days before the hearing and should have had it a week ago. He has now quit smoking, he is back on his medication and arranging to have specialist counselling. In answer to his question, the landlord said the tenant before him was evicted for smoking. She notes other tenants have complained but do not want their evidence provided.

The landlord requested an Order of Possession effective March 31, 2018 if the tenant is unsuccessful. They want to give him time to move.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Section 47 of the Act lists causes to end a tenancy. I find any one cause, if proven, is sufficient to end the tenancy.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the reports of noise dating from 2015 to the present and necessitating a fine from a bylaw officer supports the landlord's credibility on this cause. I find the last incident where the tenant admittedly was off his medication and fueled by alcohol significantly interfered with the other tenant in the building and caused their staff to fear for their safety. Although the tenant said he was celebrating his important first pension cheque and became foolish, I find this is not sufficient reason to excuse behaviour that is so disturbing to other occupants.

I find the weight of the evidence also supports the allegation that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and has put the landlord's property at significant risk. I find that the weight of the evidence is that the tenant was continuing to smoke on the property as of the date of the Notice. I find he had ignored warnings. I find this is an old wooden building and this behaviour of the tenant is putting the landlord's property at significant risk and jeopardizing the safety and health of other occupants. I find the evidence that another similar building had a fire due to a cigarette about two years ago is very likely to cause increased alarm to the landlord and other occupants.

Although the tenant said he did not receive all the landlord's evidence within the required 7 days, I find he has sufficient notice of all the causes to end the tenancy on which the notice was based. I find the purpose for requiring evidence to be served to the other party is to inform them of the case against them and give them opportunity to respond. I note the tenant put into his evidence a very detailed letter dated December 5, 2017 explaining or refuting all the causes which supports my finding that he had sufficient knowledge of the case and an opportunity to respond. I dismiss his contention that he did not have the landlord's evidence in time to respond.

In respect to the tenant's allegation of discrimination against persons with disabilities, I find insufficient evidence that the landlord discriminated against him in any way. I find he lived in the unit since 2014; he was served cautions of infractions and given many opportunities to change his behaviour. I find he went off his medications, got intoxicated and caused the incident just before the Notice to End Tenancy was issued. I find this behaviour because of his choices and not discrimination by the landlord.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on March 31, 2018 as agreed by the landlord. An Order of Possession is issued to the landlord effective March 31, 2018. The filing fee was waived.

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 20, 2018

Residential Tenancy Branch