



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 1, 2018 wherein the Tenant sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on July 26, 2018 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 on September 21, 2018.

The Landlord's representatives, B.B. (Manager), W.C. (Senior Manager) and M.Z. (Resident Manager) called into the hearing as did the Tenant's parents, B.M. (Father) and L.M. (Mother). The Tenant did not call in. Those in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matters—Evidence

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

In evidence were two letters from another occupant of the rental building regarding the Tenant. The Landlord provided a handwritten notation on both documents indicating that these letters were not provided to the Tenant.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, including the right to review and respond to any evidence submitted by the other party. As these letters were not provided to the Tenant I did not consider them in making my Decision.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name on Application

The Tenant named the resident manager as the Landlord on his Application. The Landlord, as noted on the Notice, is a corporation. Pursuant to section 64(3)(c), I amend the Tenant's Application to correctly noted the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's Senior Manager, W.C., testified as follows. He confirmed that the tenancy began January 1, 2009. The tenancy agreement was also provided in evidence.

The Notice indicated that the reasons for issuing the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- Breach of a material term that was not corrected within a reasonable time after written notice to do so;

W.C. stated that the Landlord's initial concerns were the unsanitary conditions of the rental unit, the Tenant's conflict with other residents, and the property damage caused by the Tenant (specifically smearing feces on the walls of the common area).

W.C. stated that the condition of the Tenant's rental unit has been a long standing issue. Introduced in evidence was a letter from the Landlord to the Tenant dated April 14, 2016 which includes the following information:

"On April 13, 2016, an inspection of suite no. [withheld] was completed in the presence of a Police Officer, [Tenant's Representative] and staff, [Landlord's] property Manager and Maintenance Personnel. The inspection found the current condition of the suite to be unsafe, unacceptable and unhealthy. Every room in the suite, including the hallways and stairways are completely filled with various items such as clothing, papers, bottles, two large knives, garbage, etc., to a point where it is difficult to access. The inaccessibility of the rooms, hallways and stairways within the suite is a **fire and safety hazard.**"

The Landlord provided in evidence more recent photos of the rental unit showing the following:

- The back yard area overgrown with vines;
- Stacks of garbage bags, plastic bags, recyclables, newspapers and receipts in various rooms in the rental unit.
- Tissue outside the bathroom of the rental unit window.
- Piles of soiled tissue and underwear in the bathroom.
- Dirty blinds.
- The bed covered in items to the extent the bed does not appear usable.

W.C. stated that the Tenant's behaviour is problematic in terms of how it affects other occupants of the rental unit. He alleged the Tenant stands by the laundry room and stares at other residents, particularly women, which in turn make them very uncomfortable.

Most problematically in terms of the effect of his behaviour on others, W.C. stated that the Tenant defecates behind the unit and smears it on the wall and leaves his underwear on the feces.

In a letter dated September 4, 2018 the Landlord set out the following concerns:

- The health and safety concerns regarding the Tenant have been ongoing since before the current Landlord purchased the property in June 2016.

- The rental unit and backyard are filthy and unhealthy, as unsanitary toilet papers are tossed throughout the bathroom and outside the bathroom window.
- This has impacted third party professionals (plumbers) from being willing to service the suite.
- The toilet has been constantly plugged due to excessive toilet paper and improper usage.
- The Tenant is confrontational with trades and the resident manager working at the backyard or near his suite.
- He “constantly screams at service providers to go away” and the resident manager cannot maintain the lawn behind his unit.
- He is uncooperative with his caregivers and they, in turn, have had difficulty dropping off his medication.
- He defecates in the backyard, covers it with his underwear and then rubs feces on the wall.

W.C. stated that the situation with the Tenant has significantly deteriorated as when they served the Tenant with additional documentation for this hearing the Tenant assaulted the resident manager, M.Z.

The resident manager, M.Z. also testified. He confirmed that he has worked at the rental building for two years and two months.

M.Z. testified that his personal interactions with the Tenant have been difficult as he finds the Tenant to be very uncooperative. He stated that the most recent issues arose from concerns over the condition of the Tenant’s rental unit. M.Z. confirmed the testimony of W.C. and the September 2018 letter in terms of the Landlord’s concerns about the Tenant.

M.Z. stated that at one point in time the Tenant complained that his toilet wasn’t working properly. M.Z. then came and fixed the seal. Following this, the Tenant called again and M.Z. attended and found the toilet blocked. M.Z. stated that the toilet was leaking water through the ceiling and was dripping on the stove; he claimed that the Tenant was aware of this but didn’t let the Landlord know until he could not flush the toilet due to the amount of toilet paper he had put in the bowl. He described the rental unit as extremely unsanitary at that time.

M.Z. also testified that he has received complaints from other residents that the Tenant bothers other residents. He claimed that the Tenant knocks on people’s doors and asks

for toilet paper. He also stated that the Tenant stands in the laundry area and stares at people doing their laundry in a way which makes them uncomfortable.

In terms of the allegation of assault, M.Z. testified as follows. He stated that it occurred on September 8, 2018—three hours after M.Z. served documents (including the aforementioned letter of September 4, 2018) on the Tenant and his father. M.Z. stated that he was working outside in the parking area when the Tenant came yelling and screaming and accused M.Z. was making things up. The Tenant then started pushing M.Z. and kicking him and M.Z. had no choice but to defend himself.

M.Z. stated that other tenants saw what happened and they called the police. When the police arrived, they spoke to M.Z. and then spoke with the Tenant's father (who was not present when the assault occurred but in the rental unit). M.Z. stated that when the police came back they told M.Z. that there was not enough evidence to press charges.

In response to the Landlord's testimony, evidence and submissions, the Tenant's father, B.M., testified as follows.

He confirmed that he does not live at the rental building. He confirmed that he was aware the Tenant has defecated outside the building on three or four occasions and smeared it on the outside walls. He stated that the Tenant was "forced to do this because of the crappy old terrible working toilet that the owners have in his apartment". B.M. further stated that he has taken care of the toilet in the absence of the resident manager who refuses to help the Tenant. B.M. stated that the toilet doesn't work properly or consistently, and as the Tenant has a serious digestive condition, the Tenant was forced to defecate outside. B.M. further stated that although the resident manager fixed the toilet, it is still "ancient and doesn't work."

B.M. confirmed that he has been in the rental unit, and has seen the photos which were submitted by the Landlord. He confirmed that the photos accurately depicted the condition of the rental unit four months ago, but claimed that he and his wife cleaned up the rental unit recently such that it looks much better.

B.M. confirmed that he was present *after* the alleged assault and did not witness it. B.M. stated that he talked at length with the police who confirmed that no one else actually witnessed the assault. B.M. further stated that he had requested, yet not yet received, the police report.

B.M. stated that he spoke to his son about the incident and relayed that the Tenant got mad "because he was served a pack of lies from the resident manager". He again stated that the Tenant "got mad" but alleged that it was the resident manager who struck the Tenant first.

B.M. stated that the situation of the Tenant looking at one or two women doing their washing arose because the Tenant waits near the laundry area to be picked up by B.M. B.M. stated that he believes that the Tenant's behaviour is not leering or inappropriate.

In terms of what he described as the "housekeeping situation", B.M., confirmed that it has been problematic on a few occasions. B.M. stated that he and his wife have cleaned up the rental unit on a number of occasions and are committed to doing so in the future.

B.M. stated that the program, who previously provided services to the Tenant (and others who are disabled) is withdrawing services for the Tenant. B.M. confirmed that he and his wife will take this responsibility on and will ensure his rental unit is clean and they will act as a go between for the Tenant and the Landlord.

L.M. testified as well. She stated that she was not present during the alleged assault. She stated that she spoke to her son and he said he was upset and confronted the resident manager about what was written about him, which were they believe were "completely untrue". L.M. stated that he was told by her son that he was pushed to the ground by the resident manager.

L.M. stated that previously they went into the rental unit only once or twice a year because the disability program was looking after him. She stated that this has changed and they will be there regularly now.

Both L.M. and the Landlord gave evidence regarding notices to end tenancy which had been issued to numerous tenants previously (who were all serviced by the same organization which has recently withdrawn support for the Tenant). L.M. suggested this current Notice was merely a continuation of the Landlord's desire to remove all of these tenants.

In reply W.C. stated that the Notice which is the subject of this proceeding was issued due to the unsanitary condition of the rental unit, the Tenant's behaviour in terms of his interactions with others, and his actions of defecating in the public areas. He confirmed

that the September 8, 2018 assault on the resident manager has made it clear the need to end this tenancy.

W.C. also stated that in all the years the resident manager has worked for them there have been no problems with him and other renters. He stated that the suggestion that the resident manager assaulted the Tenant is completely false.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

I find the Landlord has proven that the Tenant has put the Landlord's property at significant risk and has seriously jeopardized the health or safety of other occupants, and has seriously jeopardized the lawful right or interest of the Landlord.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The photos submitted in evidence confirm that the Tenant is not maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access. Those photos have been described earlier in my Decision and need not be detailed further; however they clearly depict the unsanitary conditions of the rental unit and the areas outside the rental unit.

While the Tenant's parents claimed to have cleaned the rental unit, and are clearly committed to helping him, I am satisfied the unsanitary condition of the rental unit is a chronic issue spanning a number of years.

I also accept the resident manager's testimony that the Tenant allowed his toilet to overflow to the point it was dripping on his kitchen stove in the room below. The photos depicting piles of used toilet paper in the bathroom support the resident manager's testimony that the Tenant also fills the toilet with paper to the extent it overflows. The extent of the damage caused by this behaviour is likely significant.

While the Tenant's medical condition is unfortunate, the act of defecating in public areas and smearing feces on the walls of the rental property is entirely unacceptable. Even in the event these incidents were accidental, as alleged by his father, there appears to be no attempt by the Tenant to clean the area for the benefit of others.

I also accept the Landlords' evidence with respect to the Tenant's assault on the resident manager on September 8, 2018. I found M.Z. to be forthright and consistent in his testimony. He was clearly very upset by the incident. Although it appears as though criminal charges have not yet been laid, the burden of proof in criminal proceedings ("beyond a reasonable doubt") is much higher than the burden of proof in civil proceedings ("balance of probabilities") such as hearings before the Residential Tenancy Branch.

The Tenant did not attend the hearing to provide affirmed testimony. Rather, I was only provided his version of events through his parents' testimony, which is hearsay, and commonly referred to as "second hand". While hearsay is admissible in hearings before the Residential Tenancy Branch, I find that the first hand testimony of the resident manager should be afforded more weight. I also note that both of the Tenant's parents confirmed he was angry with the resident manager as a result of receiving the September 4, 2018 letter; this testimony is consistent with a finding that it was the Tenant who was the aggressor at the material time.

Physical violence cannot be tolerated in a tenancy and I find the circumstances of the September 8, 2018 assault to support a finding that the Tenant has seriously jeopardized the safety of the Landlord's employees.

The Tenants mother alleged that the Notice was issued simply because the Landlord wished to evict tenants who were serviced by a particular organization.

While Branch records confirm that the Landlord issued several notices to end tenancy in January of 2018, it appears as though the Landlord continued to accept rent from those tenants and thereby reinstated the tenancies.

In any case, I find the circumstances giving rise to the Notice, which is the subject of *this proceeding*, to be sufficient to end the tenancy for the reasons articulated in the Notice, irrespective of any prior issues between the Tenant and the Landlord.

I have reviewed the Notice and confirm it complies with section 52 in terms of form and content. Consequently, and having dismissed the Tenant's claim for an order canceling the Notice I grant the Landlord an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

The Tenant's Application is dismissed. The Notice is upheld and the tenancy shall end in accordance with the Notice. **The Landlord is granted an Order of Possession effective two days after service on the Tenant.**

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: September 28, 2018

Residential Tenancy Branch