



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 4, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary issue

In this case, the tenant has spelled the landlord’s name incorrectly in their application. I have amended the style of cause to the correct spelling.

Issues to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began March Of 2006. Rent in the amount of \$593.35 was payable on the first of each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 9, 2019.

The reason stated in the Notice was that 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 testified that they can no longer work with the tenant. The landlord stated that when they receive complaints about the tenant and when they contact the tenant, in the attempt to deal the complaint the tenant yells, screams, call them names, mimics them like a child and hangs up.

The landlord testified that they have lost four occupants due to the tenant's ongoing behaviour and they have had two occupants recently say that if the tenant stays that they will be leaving. The occupants in the four units building feel threatened and are living in fear due to the tenant's erratic behaviour.

The landlord testified that they issued the Notice due to an incident that occurred on January 25, 2019. The landlord stated that they received a complaint for the occupant below the tenant. The landlord stated that the occupant told them that the tenant woke them up, banging, yelling, screaming, caller the occupant horrible names because the tenant was upset that a breaker in the electrical panel had blown. The landlord stated the tenant is retaliates by banging and stomp on the floor.

The witness PT testified that since they moved in to the rental unit in April 2018, they have been threatened, yelled, and called names at by tenant. PT testified that the tenant blames them for when a breaker blows in the electrical panel, even when they have nothing on, except their fish tank.

The witness PT testified that on the morning of January 24, 2019, they were woken by the tenant playing loud music. PT stated that the music was so loud that the concrete floor and walls were vibrating.

The witness PT testified that on the morning of January 25, 2019, they were woken by the tenant banging, yelling and swearing and calling them foul names. PT has also called them a bum and they do not belong in the rental building.

The witness PT testified that they are afraid of the tenant and will stay away from their rental unit 2 to 3 nights a week and when they are home they often stay with their neighbor.

The witness PT testified that they have also heard the tenant refer to the occupant TM as a faggot, a kid beater and if he could, he would kill TM.

The witness TM testified that they have not had any direct issues with the tenant since 2017, because there was a police incident. TM stated that they purposely avoid the tenant as their behaviour is erratic. TM stated that the tenant has called them a crazy drunk, faggot, and a child abuser. TM stated that they have lost other occupants in the building due to the tenant's behaviour.

The witness TM testified that they were awoken on January 25, 2019, by the tenant, yelling, screaming and calling the occupant across from them foul names.

The tenant testified that they deny they called the occupant below them any names. The tenant stated that all they said to the occupant was that could at least turn the breaker on in the electrical panel.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that 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.

In this case, I accept the evidence of PT and TM, over the evidence of the tenant that on January 25, 2019, the tenant unreasonably disturbed other occupants in the building by banging, yelling and calling PT foul names. I do not accept the tenant's evidence that they simply went to the electrical panel to turn on the breaker and only said that to PT that they should have turned the breaker on. I find this is not logical because PT and TM were both sleeping and were awoken by the tenant's unreasonable disturbance.

Further, the tenant could have simply turned the breaker on and returned to their unit, without unreasonably disturbing the other occupants as the electrical panel is in a common area. There was no need for the tenant to start yelling and calling PT names, which was also heard by TM.

Further, there was no way that PT would have known the circuit in the tenant's unit had tripped the electrical panel. I find it more likely than not that the circuit was blown by the tenant's own use of overloading the circuits.

Furthermore, I find the tenant's behavior of calling the occupants, names such as faggot and other foul names that I heard during the hearing is unreasonable.

In addition, the landlord has attempted to deal with the occupants complaints; however, they are met with aggression by the tenant. The tenant calls the landlord foul names, mimicking the landlord like a child would, and hangs up on conversation. I find the landlord has no option left to them, except to end the tenancy as the tenant behaviour is unreasonable and is interfering with the landlord right to do business.

Furthermore, I find the tenant's behaviour is also significantly interfering with the landlord right as the landlord has lost 4 previous occupants and have been put on notice that 2 other occupants may considering leaving, if the tenant remains.

I find the Notice has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice issued on February 4, 2019.

As the landlord has have accepted occupancy rent for the month of March 2019, I find it appropriate to extended the effective vacancy date in the Notice to March 31, 2019, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date, pursuant to section 55 of the Act.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession **effective March 31, 2019, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on February 4, 2019 is dismissed. The landlord is granted an order of possession.

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: March 20, 2019

Residential Tenancy Branch