



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 26, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 20, 2019 (the “One Month Notice”).

The Tenant appeared at the hearing with the Advocates. L.T. and L.G. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

L.T. confirmed the correct name of the Landlord and I amended the Application to reflect this. This is also reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2018 and is a month-to-month tenancy. Rent is \$600.00 due on or before the first day of the month.

The One Month Notice is addressed to the Tenant although his name is spelled wrong. It refers to the rental unit. It is signed and dated by L.T. It has an effective date of April 30, 2019. The grounds are that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and put the Landlord's property at significant risk. The Landlord's name is not included on the One Month Notice in the box below "FROM the LANDLORD".

The Tenant took no issue with the One Month Notice being amended to include the correct spelling of his name. The Tenant submitted that the One Month Notice should be set aside because it does not include the Landlord's name under "FROM the LANDLORD". The Tenant acknowledged that he understood the Landlord issued the One Month Notice.

The basis for the One Month Notice as noted in the details of cause were two incidents, one on December 13, 2018 and one on March 20, 2019, where the Tenant's action or inaction caused stove top fire or smoke.

There was no issue that the Tenant received the One Month Notice posted on the door of the rental unit March 20, 2019.

In relation to the grounds for the One Month Notice, L.T. relied on two incident reports submitted as evidence as well as a letter from another tenant in the building.

The first occurrence report is from December 13, 2018 at 10:50 p.m. It outlines an incident where the smoke alarm was ringing in the Tenant's apartment. Another individual had entered the rental unit and discovered it filled with smoke. The Tenant was unresponsive on the bed. The individual removed pans cooking unattended on the stove, which were the cause of the smoke. The writer believed the Tenant to be inebriated and noted empty liquor bottles on the kitchen counter.

The second occurrence report is from March 20, 2019 at 3:55 a.m. It states that a frying pan was left on the stove in the rental unit which set off the smoke detector. It states that the Tenant did not wake up. Another individual pulled the fire alarm and the fire

department attended. It says the firemen entered the unit and removed the smoking frying pan.

The Landlord submitted a warning letter about the December 13th incident that had been sent to the Tenant. It states how serious the incident is and that if another similar incident occurs the Tenant will be served a 30-Day Notice to End Tenancy for Cause.

The Landlord submitted a written statement from the Tenant about the December 13th incident which states the following. He and his guests consumed four bottles of wine over three hours. When his guests left, he started to make food because he had not eaten all day and was going to take medication. The combined effect of the empty stomach, wine and medication came on quickly. He turned off one of the burners and thought he turned off both. He did not turn off the second burner. He could not be roused because of the combination of wine, an empty stomach and the medication. He states "I would have liked to thank those who reacted quickly and took the initiative to act accordingly. They may quite easily have saved me from succumbing to smoke inhalation or worse...much worse".

The Landlord submitted a signed witness statement that states the following. On December 13, 2018, the witness heard a fire alarm from down the hall. They went to look and the hallway was full of smoke. They opened the door to the rental unit and the smoke in the unit was very thick. They went into the unit and found the Tenant lying in bed asleep. They removed the burning pan from the stove and turned the alarm off. They tried to rouse the Tenant but couldn't. The Tenant slept through the incident.

L.T. pointed out that the Tenant was not responsive and not able to hear the fire alarm which went off for 20 minutes in relation to the March 20th incident. She said that, in relation to the March 20th incident, another tenant was told by 911 to pull the fire alarm so the fire department would attend. L.T. submitted that the incidents were serious safety issues for the Tenant, other tenants, guests and the Landlord's property.

L.T. stated that she had sought a report from the fire department but had not yet received it. I explained that this could not be submitted later but that the Landlord could seek to adjourn if they wished. L.T. did not want to adjourn the hearing.

Advocate S.G. spoke about the Tenant making submissions to the board members of the Landlord and asked that the hearing be adjourned until the board has their next meeting so they can consider the Tenant's submissions. S.G. also spoke of possible alternatives to evicting the Tenant such as making his stove inoperable.

I explained to S.G. that the issue before me is whether the Landlord had grounds to issue the One Month Notice or not. If the Landlord had grounds, I would uphold the One Month Notice and issue an Order of Possession. If the Landlord did not have grounds, I would cancel the One Month Notice. I explained that it is not within the purview of this hearing for me to determine that some alternative solution is appropriate unless the Landlord wants to discuss settlement, which L.T. did not.

The Tenant said he is not denying the events happened. He said there was no fire just smoke. He said he understood the safety issues involved but would never intentionally disregard the safety of others. He said that, on both occasions, he had taken medication with alcohol. He spoke about no longer allowing alcohol in his place and taking steps to address the issues that lead to the incidents.

Advocate W.I. said they want to postpone the hearing because they need a chance to talk to the board. He said he was at the rental unit the next day and there was no smoke. He said he does not believe the situation was severe. He said these things happen. He said that, if it had been severe, the Tenant would have been taken to the hospital. He said there was no sign of a fire that he saw. He said there is no evidence about how severe the situation was.

The Tenant submitted a statement that says the following. A week prior to the December 13th incident he had been prescribed oxycodone for pain. On December 13th, friends visited, and they shared wine. He took oxycodone once his guests left and then started cooking. He started to feel the effects of the oxycodone and so turned off one of the pots but forgot the other on the burner. On March 20th, he was cooking and turned the burner down but not off. For several hours the burner melted a plastic handle on a spatula.

The Tenant submitted a handwritten note stating he is no longer taking medication and no longer drinks alcohol.

L.T. did not agree to adjourn the matter and said she had discussed this issue with the board and they support her position.

Analysis

I did not allow an adjournment of the hearing. I considered rule 7.9 of the Rules of Procedure. In my view, the Tenant was seeking an adjournment to discuss resolving this issue with the Landlord. However, L.T. appeared at the hearing for the Landlord and had authority to act on behalf of the Landlord. L.T. heard what the Tenant and Advocates had to say about resolving this matter and was not interested in resolving it. In my view, this is the position of the Landlord and there was no basis to adjourn the hearing.

Section 47(1)(d) of the *Residential Tenancy Act* (the “*Act*”) allows a landlord to end a tenancy for the reasons outlined in the One Month Notice. A tenant may dispute a notice to end tenancy issued under section 47 of the *Act* within 10 days of receiving the notice.

There is no issue that the Tenant received the One Month Notice March 20, 2019. The Application was filed March 26, 2019, within the time limit set out in section 47(4) of the *Act*.

I am satisfied the Tenant has both seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and put the Landlord’s property at significant risk.

Based on the witness statement, occurrence reports and Tenant’s own evidence, I accept that the following occurred.

On December 13th, the Tenant left a pot of food on a hot burner on the stove in the rental unit unattended. The rental unit and hallway filled with smoke. The smoke alarm in the rental unit went off. Other tenants in the building discovered the issue and addressed it. The Tenant was unresponsive on his bed due to the combined effect of drinking alcohol and taking oxycodone on an empty stomach.

On March 20th, the Tenant left an item on a hot burner on the stove in the rental unit unattended. This caused smoke which set off the smoke alarm in the rental unit. The Tenant did not attend to this. Other tenants in the building pulled the fire alarm so the fire department would attend.

I find these incidents to be serious and to justify ending the tenancy for the grounds noted given the following.

I am satisfied that leaving items on a hot burner unattended for enough time that they fill the rental unit with smoke and set off the fire alarm is dangerous and poses a risk to others in the building and the building itself. I accept that both the smoke caused, and the potential for a fire, poses a risk to others in the building and the building itself. I find the incidents are more serious given the Tenant was in such a state that he did not act when his smoke alarm went off.

The items were left on hot burners unattended for enough time to fill the rental unit with smoke, have smoke enter the hallway and to have the smoke alarm in the rental unit go off. The Tenant said he left a spatula on the burner for several hours in relation to the March 20th incident. The smoke alarm in the rental unit went off long enough to cause other tenants concern. These were not incidents that occurred within a short period of time before the Tenant could act.

This was not a one-time mistake. The Tenant did the same thing twice. Further, the Tenant did it twice despite being given a warning about the seriousness of the situation after the first incident. The incidents occurred only three months apart.

Both times, the Tenant made choices that contributed to the situation. Both times, the Tenant chose to drink alcohol and take medication at the same time. A reasonable person would have foreseen the possible effects of doing this on their ability to act responsibly. Both times, the Tenant chose to cook after taking medication and consuming alcohol. Again, the Tenant chose this course of action on March 20th after having put himself, others and the building at risk just three months prior.

Both times, the Tenant was unable to act despite his smoke alarm going off. Both times, others had to attend to the situation before it got worse. These were not incidents where the Tenant addressed the situation slower than expected. He did not address the situations at all. Others had to step in and deal with the dangerous situation the Tenant had caused.

During the hearing, the Tenant acknowledged the safety issues involved. In the Tenant's letter to the Landlord, he acknowledges that he could have been hurt or worse if others had not acted as they did.

Given all the above, I am satisfied the Landlord had grounds to issue the One Month Notice.

I note that I do not find the testimony of Advocate W.I. about the incidents to assist. He was not present at the time and therefore I put very little weight on his view of the incidents.

I also note that the Tenant's evidence about his character is irrelevant. There is no issue that the incidents happened. I have outlined why the incidents were serious. Whether the Tenant is a good person or otherwise a good tenant does not detract from the seriousness of the incidents. Nor does it change that the Tenant put others and the building at risk. These are the issues before me.

Nor are the steps the Tenant has now taken to address the issues relevant. The Landlord had grounds to issue the One Month Notice when they did. Therefore, the One Month Notice is valid. The validity of the One Month Notice is not affected by steps the Tenant took after receiving the One Month Notice.

In relation to the form and content of the One Month Notice, I do not find the misspelling of the Tenant's name to affect the validity of the One Month Notice. There is one letter missing and the Tenant could not have been prejudiced by this small error.

Further, I do not find the absence of the Landlord's name under "FROM the LANDLORD" to affect the validity of the One Month Notice. The name of the Landlord is stamped at the bottom of the One Month Notice. The Tenant acknowledged that he knew the One Month Notice was issued by the Landlord. There was no prejudice caused to the Tenant by this error.

Considering the above, I find the One Month Notice complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given I have found the Landlord had grounds to issue the One Month Notice, I dismiss the dispute of the One Month Notice without leave to re-apply and uphold the One Month Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the One Month Notice and upheld the One Month Notice. I have also found that the One Month Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of

Possession. L.T. asked that the Order of Possession be effective at the end of June and therefore it will be effective at 1:00 p.m. on June 30, 2019.

Conclusion

The One Month Notice is upheld and the dispute is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on June 30, 2019. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 14, 2019

Residential Tenancy Branch