



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, MT. OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause. He also seeks more time to make his application and requests a compliance order against the landlord in regard to noise coming from the suite above him.

The Notice claims that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The "Details of Cause" portion of the Notice alleges that on May 28, 2019 the tenant assaulted a staff member and then returned with a large knife and was aggressive and threatening to security personnel.

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Should the time for the tenant to make this application be extended? Is the Notice to End Tenancy a valid Notice? If not, and if this tenancy continues, is the tenant entitled to an order that the landlord comply with the law or the tenancy agreement?

Background and Evidence

The rental unit is a one bedroom apartment in a 21 storey apartment building. There is a written tenancy agreement. This tenancy started in December 2005. Currently the monthly rent is \$328.00. The landlord does not hold any deposit money.

Ms. S.B. for the landlord testifies that the tenant has received four warning letters during his tenancy. The most recent warning letter prior to this Notice was dated March 25, 2019 regarding the tenant, drunk, threatening staff and calling them "f***ing b****es."

She says that the tenant has continuously complained about noise emanating from the suite above his. The tenant above him has MS and apparently is prone to make loud noises at odd hours. Ms. S.B. says the landlord has tried to resolve the issue, including offering each tenant a different rental unit. Both declined.

She refers to a staff report from May 28, 2019. The report indicates that on that occasion the tenant, under the influence of alcohol, grabbed the shirt of a security guard while they rode together in an elevator and pulled him forward. He is reported to have then uttered words to the effect that today maybe he would kill the tenant above him. Later the tenant attended at the front office in the building brandishing a kitchen knife in the presence of security staff. He is reported to have thrown the knife but not at any person. She submits a photo, taken from the security video camera, showing the tenant in the presence of two staff with the knife raised above his head. The police attended and the tenant was removed by them and charged with a criminal offence.

Ms. S.B. tendered another incident report from June 16. However, as it involved an occurrence after this Notice was issued and as this Notice rises or falls based on the state of affairs as they existed at the time the Notice was issued, I discount any evidence of subsequent conduct.

Ms. S.S., the tenant's daughter, states that her father is frustrated by the landlord's failure to attend to the noise coming from the apartment above him. She says he feels ignored and disregarded by staff. He has been complaining about the tenant above him for about four months without result. She says the tenant above also tosses out cigarette butts which land in her father's apartment.

She indicated that her father denies assaulting anyone, though he seems to acknowledge threatening someone, perhaps the tenant above him. At the same time, she indicates that he does not remember saying "somebody will die." She indicates that he is impaired by alcohol and by depression medication.

She indicates that her father is seeking help for his alcoholism and has been clean and sober for two months. Mr. M.U. stated at the first hearing that the tenant is scheduled to go to a residential treatment center for 90 days starting in mid-September.

In response Ms. S.B. states the landlord tried to address the tenant's concerns. She says the tenant has screens on his windows and so it is not possible for cigarette butts to enter his unit from above, unless he is removing the screens. She states that the staff are fearful of the tenant.

Analysis

The tenant was ten days late in making his application to challenge the Notice. The *Residential Tenancy Act* (the "Act") permits a tenant ten days to make an application. This Notice was received by the tenant on May 31 and his application was made June 20. In all the circumstances and having regard to the fact that the tenant is said to be suffering from depression and does not speak or read the English language well, and as there has been no indication that the landlord would be prejudice by an extension, I grant the tenant's request and extend the time accordingly.

The *Residential Tenancy Act* dispute resolution mechanism offers a fairly speedy resolution of any complaint that one tenant is significantly disturbing or interfering with another. Remedies in the form of compliance orders and monetary orders for damage or loss are frequently granted. This was the tenant's proper course of action in the circumstances he alleges.

I am satisfied that on March 25, 2019, in the presence of staff, the tenant indicated that he might kill another tenant. He may not have been serious about but I'm satisfied that the staff wouldn't know that he wasn't.

With that as background, his grabbing of a staff member in the elevator on May 28 and, more significantly, his appearance in the lobby area with a large knife, posed a serious threat to the health and safety of the landlord's staff.

It is apparent that the tenant was under the influence of alcohol on May 28 but in my view that is not an answer for his conduct, nor does it lessen the effect his actions would have had on the landlord's staff.

Conclusion

I find that the tenant has seriously jeopardized safety of the landlord's staff and I find that the Notice to End Tenancy dated May 31, 2019 was a proper Notice.

As a result of that Notice this tenancy ended on July 31, 2019 and the landlord is entitled to an order of possession.

The tenant's request for a compliance order is accordingly dismissed as such an order if granted would serve no purpose.

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: August 16, 2019

Residential Tenancy Branch