



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution; the tenant confirmed receipt of the landlord's evidence. Neither party stated any concerns with timely service of documents and both were prepared to deal with the matters of the application.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause ("Notice") be cancelled or upheld?

Background and Evidence

This tenancy involves the lower unit of a house with both an upper and lower unit. The landlord lives in the upper unit and the tenant in the lower unit. A copy of the tenancy agreement was provided as evidence. The tenancy began on July 1, 2013 and rent is currently \$675.00 per month. A security deposit in the amount of \$325.00 was collected by the landlord which he still holds.

The landlord provided the following testimony. On May 15th, 2019 the landlord gave the tenant a letter regarding tenant's responsibilities. In this letter, the landlord advises the tenant that he will do an inspection of the tenant's rental unit on June 3rd and that the landlord wanted the area outside the tenant's front door cleaned up and free of any garbage and couch in the outside area. Issues of noise and smoking are also mentioned in the letter and written notices provided to the tenant are referenced however none of those notices were provided as evidence in these proceedings.

On June 2, 2019 the landlord inspected the tenant's unit and noted the tenant has 6 cannabis plants growing. The landlord also noted 'significant garbage, dirt and generally unsanitary conditions throughout the unit' during the inspection. The landlord provided photographs of the tenant's bedroom, inside the fridge, the kitchen, living room as well as two pictures taken outside the unit. The landlord testified that during the tenancy the tenant caused a significant cockroach infestation requiring professional exterminators. During the inspection, the landlord also noted the residue of smoke in the rental unit.

On June 2nd, after the inspection, the landlord asked the tenant to remove some of the cannabis plants to which the tenant responded he would fight the landlord if he touched them. When asked if the tenant was threatening him, the tenant responded, yes. On the same day, the tenant sent the landlord a message through social media that acknowledges he has not cleaned his place in 2 years. A copy of the message was provided as evidence.

On June 5th, the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause ("Notice"). Service on this date is acknowledged by the tenant. A copy of the Notice, with an effective (move out) date of July 5, 2019 was provided as evidence. The reasons for ending the tenancy are as follows:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

2. 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;
3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
4. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
5. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
6. tenant has not done required repairs of damage to the unit/site;
7. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Details of causes are: as per an inspection of the rental unit on June 2, 2019, the tenant has failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The current state of the unit represents a significant health and safety risk to the attached household. See attached for further details. A "details of causes attachment" was read into the record by the landlord for the benefit of the tenant.

Regarding the material term of the tenancy agreement that was not corrected, the landlord testified the tenant smoked in his unit when the tenancy agreement specifically disallowed it and the tenant failed to maintain sanitary standards in the rental unit.

On June 5th, right after being served with the Notice, the tenant posted to social media the following message:

Just got a eviction notices. Now its off to Land Lord Tenant. Im gona stop payment of rent as well. Pull no punches & gona f*** him with a sideways CrowBar. He broke the law & admitted it on paper. Have Fun [landlord] HAHAHA.

The landlord testified he has called the police and reported the incident.

The tenant provided the following testimony. Cockroaches were introduced to the rental unit by a friend who visited for 12 days, approximately 4 years ago. He didn't have the money to rid the unit of the roaches and was trying to get it under control when the landlord called the exterminator.

The tenant suffers from health issues which prevent him from keeping his apartment clean and he's been seeking the assistance from doctors for his medical issues. He acknowledges he's smoked in the house three times but mostly smokes outside and the wind brings the smoke into his rental unit.

He walks on 'eggshells' during the day because he's afraid to disturb the landlord who chooses to work evening shifts. Regarding the threats made to the landlord on social media, the police 'laughed about it' with him and advised him the cannabis plants were not an issue to them. He characterizes the change in the relationship with his landlord to a sudden change in the landlord's disposition that he doesn't understand.

Analysis

The parties agree the tenant was personally served with the Notice on June 5, 2019. I accept this and find service took place on this date in accordance with section 88 of the *Act*. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the any of the reasons identified in the Notice.

The landlord has provided photographs depicting the state of the tenant's rental unit which depict, as the landlord writes, '*significant garbage, dirt and generally unsanitary conditions throughout the unit*'. The photographs of the tenant's fridge, bedroom, kitchen and outside areas corroborate the landlord's assertion that the living space requires immediate attention to restore it to safe living standards. As the tenant acknowledged in his social media post to the landlord, he hasn't cleaned the place in 2 years.

Second, the landlord has provided evidence of the tenant's threat against him to cause harm to him using a crowbar made on social media. While the tenant downplayed the post during the hearing, saying the police laughed about it, I find the statement, together with the verbal threat to harm the landlord if he were to 'touch' his cannabis, is enough to cause the landlord to be concerned for his safety. For this reason, and for the reasons of the unsanitary state of the tenant's rental unit that hasn't been cleaned in 2 years, the landlord has satisfied me the tenant has seriously jeopardized the health or

safety or lawful right of the landlord contrary to section 47(1)(d)(ii) of the *Act*. I uphold the landlord's One Month Notice to End Tenancy for Cause.

Section 55 states if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The effective date noted on the Notice is corrected to July 31, 2019 the earliest date the tenancy could have ended in accordance with section 53 of the *Act*. As the corrected effective date has passed, the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

Conclusion

I grant an order of possession to the landlord 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: August 02, 2019

Residential Tenancy Branch