



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY
(1974) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, MT

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for additional time to do so. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that he did not file any of his own. The landlord stated that she offered the tenant an opportunity to view the video evidence provided to him, but he declined. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Did the tenant have extenuating circumstances that prevented him from disputing the notice to end tenancy in a timely manner?

Background and Evidence

The background facts are generally undisputed. The tenancy began on March 01, 2014. The landlord described two incidents recorded on video and filed into evidence. These incidents took place on July 24, 2019. In the video the tenant is seen coming down the hallway with a broom handle in his hands, walking towards the security camera. The tenant is then seen to be striking the camera with the broom handle in excess of 25 times before it finally breaks down.

Later that day the tenant is seen coming up to the kitchen counter, having a conversation with the cook and then pushing his soup bowl towards the cook resulting in hot soup landing on the cook's apron. The police were called, and the tenant was arrested. He spent one night in jail and was transported to the mental hospital where he stayed for two weeks.

On July 25, 2019, the landlord served the tenants with a one-month notice to end tenancy for cause, by posting it on his front door. The tenant did not receive the notice until he returned two weeks later and had run out of time to dispute the notice. Therefore the tenant's application was made on August 14, 2019 which is past the legislated time frame of 10 days.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant, has seriously jeopardized the health or safety or lawful right of another occupant and has put the landlord's property at significant risk.

The landlord stated that the tenant acted out in a manner that threatened the safety of the staff and the other occupants. By destroying the security camera, the tenant also put the landlord's property at risk. The landlord stated that housing is provided to people with mental health and addiction issues and that the cameras are vital to keep the staff and occupants of the building safe and secure.

The landlord also agreed that since the tenancy started more than five years ago this was the only incident of behavior such as this. During the hearing the tenant apologized for his behavior and explained that on that day, his medication was changed, and this is what caused him to behave in the manner that he did. The landlord stated that there have been no incidents since then.

Analysis

Based on the sworn testimony of both parties, I find that the tenant was served with the notice to end tenancy for cause on July 25, 2019 by posting the notice on the front door. The tenant is deemed to have received the notice on July 28, 2019. The tenant did not apply to dispute the notice until August 14, 2019, a full 17 days after receiving the notice.

Section 47(5) of the Act provides that tenants have 10 days in which to dispute a one month notice to end tenancy, failing which they are conclusively presumed to have accepted the end of the tenancy.

In this case the tenant failed to make application to dispute the notice to end tenancy in a timely manner and has applied for more time to dispute the notice. I am unable to grant the tenant more time to make his application without proof that exceptional circumstances prevented him from complying with the statutorily prescribed timeframe.

Section 66(1) of the Act provides:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3).

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling.

On reflection of the reasons advanced by the tenant, I find that the tenant was jailed for one night on July 24, 2019 and then was transported to the hospital for a stay of 2 weeks. The landlord was aware that the tenant was taken to jail and was not at the rental unit on the date she posted the notice to end tenancy. Since the tenant returned to the rental unit two weeks later, he did not find the notice to end tenancy prior to the statutorily prescribed timeframe within which he could make application to dispute it.

I find that the tenant has proven that *exceptional circumstances* prevented him from filing for dispute resolution within the legislated time limit. Accordingly I grant the tenant an extension of time to make this application.

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant, has seriously jeopardized the health or safety or lawful right of another occupant and has put the landlord's property at significant risk.

Based on all the evidence before me, I accept that the tenant behaved inappropriately by destroying a security camera and by causing hot soup to spill on a staff member on July 24, 2019. From the evidence and testimony of both parties, it appears that the incident on July 24, 2019 was isolated and not an ongoing pattern of behaviour for this tenant.

The landlord agreed that other than this time, the tenant did not engage in this type of behaviour. I accept the tenant's testimony that this was caused by a change in his medication and since then he is now on the appropriate medication. The landlord also agreed that the tenant has not engaged in such behaviour since July 24, 2019.

While I accept that the tenant behaved inappropriately, I find that this was the only incident of such behaviour in a tenancy that is more than five years old and that the tenant apologized for his behaviour. Therefore, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated July 25, 2019. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: October 07, 2019

Residential Tenancy Branch