



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LATHAM HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC FFT**

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; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

The tenant attended the hearing and was assisted by a support worker, PE. The landlord attended the hearing, represented by property manager, TF ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Has the landlord established reasonable grounds for ending the tenancy?
Should the tenant's filing fee be reimbursed?

Preliminary Issue

The landlord advised there was a previous arbitration hearing regarding a One Month Notice To End Tenancy for Cause that was 'thrown out' because the landlord had failed to fill out the forms correctly. The case number for the previous hearing was not provided as the arbitration dealt with a separate Notice.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to any of the documents they specifically presented to me during testimony. While I have turned my mind to all the documentary evidence, not all details of the 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.

The parties agree on the following facts. The rental unit is the lower, above ground unit of a house that consists of a self-contained 3 bedroom upper unit and a self-contained 1 bedroom lower unit. The tenant moved into the unit some five years ago when the rental unit was managed by the owner of the property.

PF, the owner's sister, took over management of the property in August of 2018, hereinafter referred to as the landlord. The landlord testified that the tenant calls her derogatory names but provided no testimony of any threats to her health or safety. The landlord testified the upper unit of the house was rented to a man with four children in April of 2019. Immediately upon their arrival, the tenant had issues with the children playing in the yard and in the house. The landlord testified the tenant threatened to kill the children and the police were called several times. On May 16, 2019, the upstairs tenant called the police because the tenant was chasing his kids with a screwdriver.

The father of the children moved out in late July, early August of 2019 and the tenancy continued with the mother of the children until September 2019. On July 29, 2019, the police were called by the mother of the children because the tenant had once again threatened to kill the children occupying the upstairs unit. The mother had moved the refrigerator in front of the door to protect herself from the danger.

On both of these occasions, the landlord spoke to the upstairs tenants who confirmed the incidents to her. Neither the father or mother of the children who occupied the upstairs unit provided written statements or were called to provide testimony however the neighbor who lives in the adjacent building provided a written statement. The statement indicates the neighbor feels women and children would be unsafe with this tenant around and that he witnessed the tenant call the children derogatory names. The neighbour also indicates he witnessed the tenant undressed on his balcony.

The current tenants occupying the upstairs units, SJ and RD were called as witnesses. Each provided written statements and those statements were read in. Both witnesses provided testimony that the tenant had an accidental fire in the rental unit caused by a lit cigarette improperly disposed of in the wastepaper basket by the tenant on the evening

of October 1, 2019. The tenant ran yelling out of his unit asking the upstairs tenants to call the fire department and RD put out the fire with 2 or 3 cups of water. RD also related another incident in September of 2019 where the tenant advised him not to use the chair RD was sitting in, claimed ownership of it and advised RD that he had urinated on it.

The parties agree the landlord personally served the tenant with the One Month Notice to End Tenancy for Cause ("Notice") on October 31, 2019. The Notice provides an effective date of November 30, 2019 and the reasons for ending the tenancy are:

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.
- Put the landlord's property at significant risk.

Under details of cause, the landlord wrote:

Tenant started a fire in his garbage in the kitchen – extensive smoke; fire dept. was called by another tenant. Other tenants complain Mr. [name withheld for privacy] is yelling at them, exposing himself to them, urinating on their outside furniture & accusing other tenants of shooting at him; police have been called multiple times.

The tenant provided the following testimony. The fire incident is not an issue. It was put out with 2 cups of water and after the fire 'you couldn't tell anything happened'. He has no phone and did the right thing by having the upstairs tenants call the fire department. There is no fire detector in his rental unit which he finds terrifying. The incident is outlandish and has been blown out of proportion because the property manager has been harbouring a grudge against him since he pointed out errors on a rent receipt she once provided to him.

The tenant testified the tenants living above him are 'party people' who constantly party until 2 o'clock in the morning. He sometimes sleeps in the living room to escape the noise. The tenant testified he's complained several times to the landlord in writing about this, however no documentary evidence of that was provided for this hearing. The tenant says he has no qualms with the upstairs tenants, delivers the mail to them and has a good relationship with them although he dislikes their music and their late night partying. He acknowledges the allegation of the upstairs tenant shooting at him may have been false as it might have been firecrackers or fireworks. He no longer believes it was them.

Lastly, the tenant testified he complained several times to the owner of the rental unit about the family who lived there before the current tenants, saying they were 'out of control' with no supervision and laying in the middle of the road to 'see what happens'. No documentary evidence of his complaints were provided by the tenant.

Analysis

The parties agree the tenant was served with the One Month Notice To End Tenancy for Cause on October 31, 2019. The tenant filed to dispute the Notice on November 8, 2019. I find the tenant disputed the Notice within 10 days, as required by section 47 of the *Act*.

If the tenant disputes the Notice, pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, 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 reasons identified in the Notice. In the matter at hand, the landlord must demonstrate that the tenant

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or
- Put the landlord's property at significant risk.

In this case, I find the landlord has not provided sufficient evidence to show the tenant has done either of these things. First, the details of incidents provided for ending the tenancy seemingly relate to the fire that happened on October 1st. There is no mention of any of the incidents regarding the previous family living in the rental unit above him or how he has jeopardized their health, safety or lawful right. I must therefore give little weight to the landlord's evidence regarding the previous family living upstairs who were not called to provide testimony or to provide written statements. The same holds true for the neighbour's statement which provides insufficient evidence of his observations of interactions with the current occupants of the upper rental unit. As I advised the parties during the hearing the landlord must be prepared to prove the tenant jeopardized the health or safety to another occupant or the landlord, not the neighbours and not previous tenants who moved out many months ago. To be clear, I also find the tenant has not breached any lawful right of the other occupants or the landlord. While the landlord indicates the tenant has called her derogatory names, I do not find this sufficient cause to end the tenancy. Likewise, the 'urinating incident' was neither witnessed nor corroborated and it appears to me the tenant was trying to dissuade the upper unit tenant from using a common property chair. This is not a proper reason to end the tenancy.

This brings us to the second reason for ending the tenancy stated: putting the landlord's property at significant risk. The parties are in agreement that the tenant caused a fire in his garbage can the evening of October 1, 2019. The tenant does not dispute the landlord's attribution of the fire to a lit cigarette in the garbage that was put out with 2 to 3 cups of water. While the fire may have been distressing to the other occupants of the building and to the tenant himself, the single small fire in itself, is not a reasonable reason to end the tenancy. The landlord has not shown a pattern of consistent dangerous activity that would put the property at risk, nor has the landlord shown that this incident was anything more than an accident. I am not satisfied that the tenant has put the landlord's property at significant risk. In fact, the lack of a fire alarm in the rental unit may contribute an even greater risk to the health and safety of the tenant and the occupants above.

For these reasons, I find the landlord has not proven the tenancy should end for the reasons stated on the Notice issued on October 22, 2019 and the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

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: January 10, 2020

Residential Tenancy Branch