



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause and for more time to apply to cancel this One Month Notice to End Tenancy for Cause.

The Tenant stated that he personally served the Landlord with the Dispute Resolution Package, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received by the Landlord on January 15, 2020.

On January 14, 2020 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that he does not recall serving this evidence to the Landlord. The Agent for the Landlord stated that this evidence was not served to the Landlord. As there is no evidence that this document was served to the Landlord, it was not accepted as evidence for these proceedings.

The Tenant stated that he believed he submitted a copy of the One Month Notice to End Tenancy for Cause to the Residential Tenancy Branch, however I do not have a copy of that document. He stated that he does not recall serving the One Month Notice to End Tenancy for Cause to the Landlord. The Agent for the Landlord stated that the One Month Notice to End Tenancy for Cause was not served to the Landlord. As there is no evidence that this document was served to the Landlord, it was not accepted as evidence for these proceedings.

The Landlord submitted no evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Should the Tenant be granted more time to apply to cancel this One Month Notice to End Tenancy for Cause?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began approximately six years ago and that the rent is due by the first day of each month.

The Agent for the Landlord stated that on December 30, 2019 the One Month Notice to End Tenancy for Cause was emailed to the Tenant's support worker. She stated that this support worker confirmed that the One Month Notice to End Tenancy for Cause had been delivered to the Tenant, although she does not know the date of delivery.

The Tenant stated that he received the One Month Notice to End Tenancy for Cause from a support worker. He stated that he does not know when he received it, although he knows it was sometime in January of 2020.

The Agent for the Landlord stated that the One Month Notice to End Tenancy for Cause declared that the Notice declared the Tenant must vacate the rental unit by January 31, 2020. The Tenant stated that he believes the One Month Notice to End Tenancy for Cause declared he must vacate the rental unit by January 31, 2020.

The Agent for the Landlord stated that the One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Tenant stated that he does not have a copy of the One Month Notice to End Tenancy for Cause with him, and he does not recall the reason cited for ending the tenancy.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding in October of 2019. The file number for that file was provided by the Agent for the Landlord. This number is recorded on the first page of this decision.

The Agent for the Landlord stated that in that decision the Arbitrator declared, in part, that if the Tenant behaved inappropriately in the future and the Landlord opted to serve another One Month Notice to End Tenancy for Cause, the issues discussed at the October hearing could be considered in support of any subsequent One Month Notice to End Tenancy for Cause. The Tenant was unable to articulate whether the Agent for the Landlord had fairly summarized that portion of the decision of October of 2019.

I have reviewed the decision, dated October 07, 2019, and accept that the Agent for the Landlord has accurately summarized the aforementioned portion of the Arbitrator's decision. The October 07, 2019 related to the Landlord's attempt to end the tenancy on the basis of one incident, in which the Tenant destroyed a surveillance camera with a broom handle by striking it more than 25 times. At the hearing in October of 2019 the Tenant apologized for his behaviour and attributed it to a change in medication.

The Agent for the Landlord stated that a written staff record indicates that on October 19, 2019 the Tenant uttered profanities that were directed towards the staff, which are sufficiently offensive that they will not be recorded here. The Tenant stated denies this allegation.

The Agent for the Landlord stated that a written staff record indicates that on October 31, 2019 the Tenant threw food at a staff member, which struck the employee in the chest. The Tenant stated that he "remembers it not happening".

The Agent for the Landlord stated that a written staff record indicates that on November 13, 2019 the Tenant ignored staff directions to refrain from entering a restricted staff area in the kitchen and he physically pushed past a staff member to gain access to the restricted area. The Tenant stated that he does not recall this incident.

The Agent for the Landlord stated that a written staff record indicates that on November 29, 2019 the Tenant came to the office and asked that they review their video surveillance cameras, as he had property stolen and had been assaulted by the police. The Tenant was told that the video surveillance could not be reviewed in the presence

of the Tenant, at which time he exhibited a “threatening posture”. The Tenant stated that he recalls being angry during this interaction and he apologized for his behaviour.

The Agent for the Landlord stated that a written staff record indicates that on December 03, 2019 the Tenant kicked a fire extinguisher that was on the wall. The Tenant stated that he jokingly slapped the fire extinguisher on that date, but he did not damage it and it did not fall from the wall.

The Site Manager stated that the support workers at this residential complex feel intimidated by the Tenant’s aggressive behaviour; they find it difficult to work with him; and they believe the Tenant is unwilling to cooperate either them.

The Advocate for the Tenant stated that recently the Tenant has not been receiving support from his mental health team and he has had a “hard year”. She stated that the Tenant is now will to work with his team and it is possible his behaviour can improve. She argued that a “homeless” Tenant will not benefit either the Tenant or the community.

The Tenant stated that he is sorry and that he hopes to be able to control his temper in the future. He stated that is not a violent person and that he did not physically or verbally assault anyone.

Analysis

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that he received the One Month Notice to End Tenancy for Cause that is the subject of this dispute sometime in January of 2020. As the Agent for the Landlord does not know precisely when the One Month Notice to End Tenancy for Cause was given to the Tenant by his support worker and the Tenant does not know when it was received, I am unable to determine precisely when the Notice was received by him.

A tenant who wishes to dispute a One Month Notice to End Tenancy for Cause must do so within 10 days of being served with it. As the Tenant filed this Application for Dispute Resolution on January 14, 2020 and it is not known when he received it in January, I am unable to conclude that he did not dispute it within 10 days of receiving it.

Section 47(5) of the *Residential Tenancy Act (Act)* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution

in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. As I am unable to conclude that the Tenant did not dispute the One Month Notice to End Tenancy for Cause within 10 days of receiving it, I am unable to conclude that he is presumed to have accepted that this tenancy ended pursuant to section 46(5) of the *Act*.

As I am unable to conclude that the Tenant did not dispute the One Month Notice to End Tenancy for Cause within 10 days of receiving it, I find it is not necessary for me to consider the Tenant's application for more time to file this Application for Dispute Resolution. Rather, I will consider the merits of the application to cancel the One Month Notice to End Tenancy for Cause.

Section 47(d)(i) of the *Act* authorizes a Landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. On the basis of the testimony of the Agent for the Landlord and in the absence of any evidence to the contrary, I find that the One Month Notice to End Tenancy for Cause that was served to the Tenant declared that this tenancy was ending for this reason.

I find that the incidents on October 19, 2019, October 31, 2019, November 13, 2019, November 23, 2019, and December 03, 2019 occurred in the manner described by the Agent for the Landlord. The Tenant does not dispute the events of November 23, 2019. I find that the reports of the remaining incidents were credible, as they were based on written reports from staff members who seemingly have no reason to misrepresent the events.

Conversely, I find that the Tenant's denial of the events of October 19, 2019 and October 31, 2019 to lack credibility, as the denials were made without any real thought or sincerity.

I find the Tenant's testimony that he jokingly struck a fire extinguisher on December 03, 2019 also lacks credibility, as I can find it highly unlikely that staff would have recorded that event if it had been a joke. Even if the Tenant intended the act to be humorous, I find it reasonable to conclude that the staff member(s) present considered it to be an act of violence.

I find that the Tenant's inability to recall the events of November 13, 2019 does not establish that the events did not happen. Rather, I find this inability to recall is consistent with his inability to recall other details, such as if or when he served documents related to these proceedings.

After considering all of the aforementioned events, I find that the Landlord has provided sufficient evidence to show that the Tenant has significantly interfered with or reasonably disturbed another occupant or the Landlord. I therefore dismiss the Tenant's application to set aside the One Month Notice to End Tenancy.

In adjudicating this matter I have placed no weight on the Tenant's submission that he is not a violent person. I find that this testimony is disputed by his own testimony that he hopes to be able to control his temper in the future and that he was angry on November 23, 2019. I also find it is disputed by his acknowledgement, during the hearing in October of 2019, that he struck a video surveillance camera in excess of 25 times.

While I accept the Advocate for the Tenant's submission that it is possible the Tenant's behaviour could improve, with the help of his mental health team, and that being "homeless" will not benefit either the Tenant or the community, I find that the needs of the Tenant do not supersede the needs of the staff working at this residential complex. I accept the evidence that the staff are intimidated by the Tenant and, in my view, their right to a safe working environment must be respected.

Section 55(1) of the *Act* requires me to grant to the landlord an order of possession of the rental unit if I dismiss an application to cancel a One Month Notice to End Tenancy for Cause AND the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act*.

As neither party submitted a copy of the One Month Notice to End Tenancy for Cause, and the Tenant did not have a copy of that Notice with him at the time of the hearing, I have insufficient evidence to determine whether the Notice complies with section 52 of the *Act*. I therefore am not granting an Order of Possession.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause is dismissed. **The Tenant is now obligated to vacate the rental unit on the basis of that One Month Notice to End Tenancy for Cause.**

In the event that parties cannot mutually agree on the date this rental unit must be vacated, the Landlord has the right to apply for an Order of Possession on the basis of this decision. The merits of the One Month Notice to End Tenancy for Cause will not need to be considered at a future hearing.

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: March 13, 2020

Residential Tenancy Branch