



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued to him by the landlord;

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The landlord confirmed receiving the tenant's evidence and also confirmed not providing his own evidence, saying that his evidence would be the tenant's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claim and my findings around it are set out below.

The evidence shows that this tenancy began on December 1, 2019 and that the rental unit is in the basement suite of the landlord's residence.

The One Month Notice to End Tenancy for Cause which is the subject of this application, was dated February 12, 2020, for an effective move out date of March 31, 2020. The tenant submitted that the landlord served the Notice by sliding it under his door.

The cause listed on the Notice, submitted into evidence by the tenant, alleged that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

It is noted that the landlord did not submit evidence prior to the hearing to demonstrate what the alleged illegal activity was by the tenant.

I therefore queried the landlord, who ultimately could not point to a serious or otherwise violation of federal, provincial or municipal bylaw.

The landlord stated that the tenant's cooking smells disturbed his sleep and he could not get his 8 hours of sleep. The landlord said that most of the odours smell like beans and pork fat.

When questioned further, the landlord said the smells coming from the rental unit could possibly be drugs, because "what else could it be?"

Among other things, the landlord said he wants the tenant to cook at normal times and not between 10:00 p.m. and 6:00 a.m.

The landlord submitted that he has tried to sleep on his living room floor, but his physical well-being is jeopardized as he cannot get his 8 hours of sleep, due to the cooking smells.

Tenant's response –

The tenant denied that he was cooking late at night and on some of the dates the landlord complained of him cooking, he was not at home.

The tenant submitted that he works full-time, 8:00 a.m. to 4:30 p.m. and that his latest cooking is at supper, between 5:00 p.m. and 7:00 p.m.

The tenant submitted that the problem might be the improper ventilation in the basement suite, which he has addressed with the landlord.

The tenant said that he has changed what food he cooks to help the landlord, but the complaints continued.

The tenant said he does not indulge in drugs.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

I have reviewed Residential Tenancy Policy Guideline 32, which shows that an illegal activity would include a serious violation of federal, provincial or municipal bylaw. The party alleging the illegal activity, the landlord here, has the burden of proving that the activity was illegal.

In the case before me, the landlord confirmed that he could not prove any illegal activity, rather, it was his physical well-being that was impacted.

I find that cooking smells do not amount to any form of illegal activity and I also find that the landlord submitted insufficient evidence of drug use.

I have reviewed the email exchanges between the parties, and not in any of the emails did the landlord mention that he suspected drug activity. The complaints of the landlord to the tenant directly centered on cooking smells. It appeared to me that the landlord only mentioned “drugs” when I asked him to specify what were the illegal activities being committed by the tenant.

As the landlord submitted insufficient evidence that the tenant breached or violated any federal, provincial, or municipal bylaw, I find he has not supported the Notice he issued to the tenant.

Therefore, I grant the tenant's application for Dispute Resolution and order the One Month Notice dated and issued February 12, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Cautions to the landlord-

After reviewing the tenant's evidence of the email exchanges between the parties, I find it necessary to issue a caution to the landlord.

In one email, he suggested to the tenant not to cook after 6:00 p.m., among other things; otherwise "we should think of splitting up".

I also find that in one email, he informed the tenant that a previous tenant was a bingo leader and cooked after midnight. The landlord said further that the smell of the previous tenant's midnight cooking was quite nice, but that he also could not sleep through those smells. The solution to the previous tenant's cooking smells was that after a few talks, she elected to leave.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as the case here, emails to the tenant attempting to restrict his cooking time to before 6:00 p.m.

In this case, I must advise the landlord that interfering with a tenant's right to quiet enjoyment such as attempting to unreasonably restrict the times he is allowed to cook and numerous emails about cooking smells or serving unfounded Notices to end the tenancy, could result in the tenant being successful in future applications where he may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

If the landlord would like to review his legal obligations, the landlord may want to consult with staff at the Residential Tenancy Branch if he has questions about those obligations.

Under section 62(1) of the Act, the director has authority to determine any matters related to that dispute that arise under this Act or a tenancy agreement.

In this case, although the tenant did not request recovery of his filing fee of \$100, I find it appropriate in these circumstances to award him the fee he paid, pursuant to section 72(1) of the Act.

I authorize the tenant to deduct \$100 from a future monthly rent payment, to satisfy his monetary award. The tenant should advise the landlord when he makes this deduction and the landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent when the tenant makes the \$100 authorized deduction.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's One Month Notice to End Tenancy for Cause, dated February 12, 2020 be cancelled.

The tenant has been granted recovery of the filing fee of \$100 and he is authorized to deduct this amount for a future rent payment.

The landlord has been issued cautions regarding his legal obligations.

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: April 3, 2020

Residential Tenancy Branch