



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing I advised the landlord's agent that the evidence provided by the landlord was filed a day late, and she replied that she has conducted hundreds of these hearings and she would "let it go this time," and would not file a complaint against me with respect to not calculating the time correctly.

Although the landlord's agent is free to write whatever letters she wishes to the Executive Director, Residential Tenancy Branch, for the benefit of the landlord's agent, I offer the following: evidence filed in the Residential Tenancy Branch automated system shows me the names assigned to the evidence by the party filing the evidence and the date it was filed. If the time limit had expired, the date shows up in red to alert me that it was not filed in time. The Residential Tenancy Branch Rules of Procedure states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. That means that the day of filing the evidence and the date of the hearing are not counted.

In this case, the landlord filed the evidentiary material on August 11, 2020 and the hearing was scheduled for August 18, 2020, and the landlord's evidence was filed 1 day late.

The tenant did not oppose the inclusion of the landlord's evidence, and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 1, 2015 and reverted to a month-to-month tenancy after March 31, 2016, and the tenant still resides in the rental unit. Rent in the amount of \$825.00 was originally payable on the 1st day of each month, which has been increased and is now set at \$936.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$412.50 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a large apartment complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent testified that the resident manager was chased by a dog and a guest of the tenant. There had been complaints of a person in the hallway of the rental complex. When the resident manager approached the person, the tenant arrived and yelled at him. The resident manager felt his life was in danger; he wasn't sure of how to handle the situation. The dog was left with the tenant after the guest had vanished, and the incident took place across the hall from the tenant's rental unit.

The landlord's evidentiary material was filed twice and the landlord's agent referred to an incident report and a written complaint. The Incident Report is handwritten on a form and is dated November 18, 2019. It states that the resident manager was called by a tenant due to a suite door breach (kicked in) from a male friend who is barred from the building, which occurred on November 16, 2019.

The document marked "Complaint" is a type-written report dated April 8, 2020 signed by the resident manager on April 9, 2020, stating that a tenant called about a woman who "seeme quite out of it" sat in front of her door with a large dog. Upon investigation the resident manager saw the woman and a large Rottweiler, and the woman refused to leave. As she got up her dog got on its hind legs and growled at the resident manager. The tenant arrived and seemed to know the woman and the dog and yelled profanities at the resident manager. The tenant left and the resident manager called police. An altercation occurred between the woman in the hallway and the resident manager. The resident manager went to the lobby and met with 2 officers. The tenant was also present and told police her friend had some kind of breakdown, and the dog belonged to the boyfriend of

the woman in the hallway. The police did not locate the woman but her backpack was left in one of the stairwells. Police told the resident manager that the tenant had not been co-operative. The resident manager received a text from the tenant asking that her locks be changed, that she is scared and that they were “dangerous people.”

The tenant testified that she does not know the woman who was in the apartment complex, but knows the woman’s boyfriend and knows the dog. The tenant was leaving the building at that time, but called the woman’s boyfriend asking him to attend to get the dog and the woman. The tenant called the police, and helped out with the situation by taking the dog and calling the boyfriend. The resident manager was not present when the tenant was talking to officers.

The tenant denies that the dog would growl or get on his hind legs and has never seen him do that.

It’s all made up; no one said anything to the tenant. The tenant had nothing to do with it. People sneak into the building, and the tenant cannot understand why this is being “pinned” on her.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it: “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,” is in dispute.

The landlord’s agent testified that the resident manager was chased by the dog and guest of the tenant. However, I have read the complaint and the incident report provided by the landlord, and the only evidence to support the reason for issuing the Notice is that the writer states that the tenant “seemed to know” the woman in the hallway. There is no evidence to satisfy me that the tenant allowed the woman into the building. There is no evidence to satisfy me that the woman was permitted on the property by the tenant, or that the woman was a guest of the tenant. I accept that the resident manager was frightened or felt that his life was in danger, but I am not satisfied that the tenant permitted the woman or the dog on the property.

Therefore, I cancel the notice to end the tenancy, and the tenancy continues.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated June 29, 2020 is hereby cancelled and the tenancy continues.

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 20, 2020

Residential Tenancy Branch