



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW VIEW SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on August 14, 2020 the Dispute Resolution Package to the Residential Tenancy Branch in August of 2020 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

In August the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on August 25, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 09, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was served to the Landlord, via registered mail, on September 09, 2020 and, via email, on September 10, 2020. The Agent for the Landlord acknowledged receiving this evidence. The Agent for the Landlord stated that the Landlord did not require additional time to consider this evidence, and it was accepted as evidence for these proceedings.

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?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began in 1995;
- In 2018 the parties signed an Addendum to the Tenancy Agreement, in which the parties agreed that smoking was prohibited in the rental unit and common areas of the building;
- A One Month Notice to End Tenancy for Cause was personally served to the Tenant on July 30, 2020;
- The One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by August 31, 2020; and
- The One Month Notice to End Tenancy for Cause declared that the Notice was being served because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

In support of the Landlord's attempt to end the tenancy because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, the Agent for the Landlord #2 stated that:

- In March of 2020 the Tenant told her that she "blacked out" while smoking in the rental unit and that her cigarette fell onto the carpet;
- The Tenant told her that she immediately picked up the fallen cigarette and extinguished it;
- She does not believe the cigarette damaged the carpet when it fell;
- She believes the Tenant is still smoking in the unit because when she inspected the unit on July 28, 2020, she observed cigarette ashes on the table; and
- Document #16 is a photograph of the cigarette ashes she observed on July 28, 2020.

In support of the Landlord's attempt to end the tenancy because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, the Agent for the Landlord stated that:

- The Tenant has a history of smoking in the unit;
- The Tenant has a history of causing damage as a result of smoking;
- In 2015 the carpet in the rental unit was replaced because it had been burned by the Tenant's cigarette on several occasions;
- The Landlord is concerned that the Tenant's medical condition may result in a repetition of the incident that occurred in March of 2020;
- There has been no repetition of the incident that occurred in March of 2020, although she believes the Tenant is still smoking in the unit.

In response to the allegations being made by the Landlord, the Tenant stated that:

- In March of 2020 she "blackened out" while smoking in the rental unit and that her cigarette fell onto the carpet;
- Her "black out" was the result of a hypoglycemic attack;
- She quickly realized her cigarette had fallen so she picked it up and extinguished it;
- The cigarette did not cause any damage;
- There has been no repetition of the incident that occurred in March of 2020;
- Her medications have been corrected and she does not anticipate any similar incidents;
- She only smoked in the unit once in 2020, which was the incident she reported in March of 2020; and
- She does not know why ashes were observed on her table on July 28, 2020.

In response to the allegations being made by the Landlord, the Agent for the Tenant stated that:

- Between 2013 and 2015 the Tenant burned the carpet on several occasions for reasons that are related to her mental health;
- The Tenant's medications have been corrected and he does not anticipate any incidents similar to the one that occurred in March of 2020;
- He is arranging for a health care worker to attend the unit on a regular basis to ensure his mother is taking her medications correctly; and
- Family members are checking on the Tenant on a regular basis.

Analysis

Section 47(1)(i) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. I specifically note that the Landlord has not notified the Tenant that the Landlord intends to end the tenancy pursuant to section 47(1)(i) of the *Act*. Even if I concluded that the Tenant has breached a material term of the tenancy agreement by smoking in the rental unit and that she continued to do so after she received written notice to stop, I could not end this tenancy pursuant to section 47(1)(i) of the *Act*, because clear notice of those grounds has not been served.

Sections 47(1)(d)(ii) and 47(1)(c)(iii) of *Act* the permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. The Two Month Notice to End Tenancy for Landlord's Use that is the subject of these proceedings relies on these sections to end this tenancy and I must decide if the Landlord has established grounds to end the tenancy pursuant to one or both of these sections.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the landlord bears the burden of proving there are grounds to end the tenancy. I find that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d)(ii) or 47(1)(c)(iii) of *Act*.

In deciding this matter, I considered the undisputed evidence that in March of 2020 the Tenant "blacked out" while smoking in the rental unit and that her cigarette fell onto the carpet. While I accept that this could have had very serious consequences, I find that it is not grounds to end the tenancy because:

- The Tenant quickly realized her cigarette had fallen and she was able to react appropriately, thereby eliminating the potential risks;
- The cigarette did not cause any damage;
- The incident was the direct result of a medical condition, which the Tenant appears to have under control with medication;
- The Tenant's family is engaging with the Tenant to ensure the Tenant's medications are being taken appropriately;
- There has been no repetition of the incident that occurred in March of 2020; and

- The Landlord did not attempt to end this tenancy as a result of the March incident until after Agent for the Landlord #2 observed ashes in the unit on July 28, 2020, which causes me to conclude that even the Landlord did not consider the March incident to be particularly dangerous.

In deciding this matter, I considered the undisputed evidence that prior to 2015 the Tenant burned the carpet in the rental unit with cigarettes on several occasions. Given the historical nature of these incidents, and the absence of any evidence that the Tenant has burned the carpet since 2015, I find that the Tenant's actions prior to 2015 do not convince me that her current smoking habits pose any current significant safety risks to the residential complex or other occupants.

In deciding this matter, I placed no weight on the testimony of Agent for the Landlord #2, who stated that she observed cigarette ashes on the Tenant's table on July 28, 2020. Even if I accepted that the ashes establish that the Tenant was smoking in the unit on that date, it does not establish that the smoking poses any significant safety risks to the residential complex or other occupants.

In deciding this matter, I placed no weight on the commonly understood health impacts that second hand smoke has on other occupants. Given that many residential complexes permit tenants to smoke in their rental unit, I cannot conclude that these health impacts and/or general fire risks typically associated to smoking would be grounds to end the tenancy pursuant to section 47(1)(d)(ii) or 47(1)(c)(iii) of *Act*.

As the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d)(ii) or 47(1)(c)(iii) of *Act*, I grant the Tenant's application to set aside this One Month Notice to End Tenancy for Cause.

Conclusion

I set aside the One Month Notice to End Tenancy that is the subject of this dispute and I order that this tenancy continue until it is ended in accordance with the *Act*.

This decision does not prevent the Landlord from ending this tenancy pursuant to section 47(1)(i) of the *Act* by serving another One Month Notice to End Tenancy for Cause.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 14, 2020

Residential Tenancy Branch