



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 tenants seeking an order cancelling a notice to end the tenancy for cause.

One of the named tenants attended the hearing and gave affirmed testimony, advising that he does not reside in the rental unit but is the financial guardian of the other tenant who does reside in the rental unit. The landlord company was represented at the hearing by an agent, who also gave affirmed testimony, and called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties agree that all evidence has been exchanged, and all evidence 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 or End of Employment was given 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 month-to-month tenancy began on or about February 1, 2012 and was a tenant in the rental unit when the landlord purchased the building in December, 2019. The tenant still resides in the rental unit. Rent in the amount of \$450.00 per month is payable on the 1st day of each month and there are no rental arrears. The landlord's agent believes a security deposit in the amount of \$225.00 was collected at the beginning of the tenancy. A copy of a document alleging to be a tenancy

agreement has been provided for this hearing. The rental unit is a single room occupancy apartment.

The landlord's agent further testified that she was present when the landlord conducted an inspection of the rental unit in December, 2019. The rental unit was so full of things that the door couldn't be opened, and the tenant had to go outside to talk to the landlord's agents. On January 20, 2020 the landlord provided a letter telling the tenant to clean up the rental unit by January 24, 2020. The landlord's agent went back on that date, and took photographs, which have been provided for this hearing. The landlord's agent went back again in July, 2020 and nothing had changed.

The landlord's agents tried everything from their end to help the tenant. He is a decent person to other residents and needs help for his situation.

The fire department attended as well, and a report has been provided, which is dated March 10, 2020 and states that the landlord must ensure all means of egress and access to exits are clear and free of any obstructions at all times. It also states that the landlord must "reduce fuel load in Unit by 40%; ensure door can fully open in the unit; ensure clear path to window and around bed in the unit." On March 11, 2020 the landlord followed up with a letter to the tenant stating that the tenant has been ordered to comply with those conditions, failing which the landlord will have no choice but to issue a One Month Notice to Vacate.

The building was infested with bedbugs and cockroaches, and all units must be treated at one time, but the pest control company personnel could not get access, and a copy of their report has been provided for this hearing. It states that the rental unit was extremely cluttered, old garbage and recycling kept under the sink and throughout the room as well as a high level of cockroach activity and live cockroaches were visible. On June 23, 2020 the landlord provided a letter to the tenant stating that the tenant had not followed the orders of the fire marshal, and that the pest control report indicates that the rental unit is too cluttered to be treated for pests and therefore jeopardizes the wellbeing of other residents and the landlord's property.

The landlord issued a One Month Notice to End Tenancy for Cause or End of Employment, and a copy has been provided for this hearing. It is dated July 17, 2020 and contains an effective date of vacancy of August 31, 2020. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The landlord's witness testified that she is an assistant property manager for the rental complex and was present during inspections of this rental unit. The door could not be

opened and clutter was all over the place, even touching the ceiling. The tenant could only move around the door. The witness also saw the fire inspector in the rental unit, who was giving the tenant a chance as well. It is not safe for anyone.

The landlord served a notice to end the tenancy at the beginning of the year but cancelled it and tried to help the tenant. The unit cannot be treated for bugs and a fire possibility exists.

The tenant's agent is the tenant's cousin and financial guardian, who testified that some progress has been made, and has provided a photograph showing a clear path in the tenant's room due to the fire inspector's report showing there was no egress. It has been decluttered and is no longer one of the hazards. Since the tenant's agent has been aware of it, he has been assisting the tenant to clean it up.

If the landlord's agents had contacted the tenant's agent, it would not have gone this far.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord has been trying for close to a year to rectify the problems. The landlord has a responsibility to provide a safe environment for all tenants, and cannot fulfill that legal obligation with this tenant.

SUBMISSIONS OF THE TENANT'S AGENT:

Obviously, the tenant needs more supervision, and the tenant's agent will supervise more closely to keep the rental unit in a safe condition. He sees the tenant about once a week and did not appreciate the severity of the situation until recently and made significant remediation in the month that he has realized the severity.

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. Further, to end a tenancy for breach of a material term, the party alleging a breach must inform the other party in writing that there is a problem, that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.

The evidentiary material of the landlord shows that the landlord has done all of that, and since December, 2019 the situation has not improved by much.

Although the tenancy agreement, or note about paying rent, does not indicate anything about keeping a room clean, it is a standard term for every tenancy agreement that a tenant must ensure safety for all other tenants. I am satisfied that the landlord has established breach of a material term of the tenancy agreement, and I dismiss the tenants' application to cancel it.

The *Residential Tenancy Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause or End of Employment, and I find that it is in the approved form and contains information required by the *Act*, and therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days' notice to the tenant.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days' notice to the tenant.

This order is final and binding and may be enforced.

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: September 01, 2020

Residential Tenancy Branch