



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 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 the Application for Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in January of 2021 was posted on the Tenant's door on March 25, 2021. The Landlord acknowledged finding these documents on his door, although he does not recall when it was located. As the Landlord acknowledged receiving these documents, this evidence was accepted as evidence for these proceedings.

On April 18, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on April 18, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Landlord stated that documents he submitted to the Residential Tenancy Branch on April 21, 2021 are simply duplicates of the evidence he submitted to the Residential Tenancy Branch on April 18, 2021 and they were not, therefore, served to the Tenant. On the basis of this testimony, I have not viewed those documents.

On April 28, 2021 the Tenant submitted one page of evidence to the Residential Tenancy Branch. The Tenant stated that this document was emailed to the Landlord on April 28, 2021. As this document was not served in accordance with the timeline established by the Residential Tenancy Branch Rules of Procedure, it was not accepted as evidence for these proceedings.

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

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the 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:

- The tenancy began on August 01, 2018;
- Rent of \$1,500.00 is due by the first day of each month;
- The yard of the rental unit is for the private use of the tenancy;
- a One Month Notice to End Tenancy for Cause was personally served to the Tenant on January 22, 2021;
- the One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by March 01, 2021; and
- the reasons for ending the tenancy cited on the One Month Notice to End Tenancy for Cause are that the 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; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; the tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property; the tenant or a person permitted on the property has caused extraordinary damage to the rental unit; and the tenant has breached a material term that has not been corrected within a reasonable time.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the tenant has two cats, which is a breach of the term in the tenancy agreement that prohibits cats.

In support of the submission that the Tenant is breaching a material term of the tenancy agreement by having cats, the Landlord stated that:

- when the tenancy agreement was signed, he wrote the words “No Pets” on the tenancy agreement beside the area intended to record a pet damage deposit;
- he created two copies of the tenancy agreement at the time of signing and the Tenant was given a copy of that tenancy agreement on the date it was signed;
- in January of 2021 he learned the Tenant had two cats;
- the Tenant did not have permission to have the cats;
- the Tenant provided him with a cheque, dated May 01, 2020, which included \$1,500.00 for rent for May and \$500.00 for money the Tenant owed to him;
- the Tenant told him that the “P.D.” the Tenant wrote on that cheque represented the words “previous debt”;
- the Tenant was returning \$500.00 to the Landlord, which the Landlord had given to him when they were discussing a purchase of bulk meat, which did not occur;
- the Tenant has not complied with his written direction to remove the cats.

In response to the submission that the Tenant is breaching a material term of the tenancy agreement by having cats, the Tenant stated that:

- when the tenancy agreement was signed, there was no discussion of whether pets were allowed;
- he was not provided with a copy of the tenancy agreement until August 16, 2018, and shortly thereafter he noticed the Landlord had added the words “No Pets”;
- in May of 2020 he acquired two cats;
- in April of 2020 the Landlord agreed he could have cats, providing the Tenant paid a pet damage deposit of \$500.00;
- he provided the Landlord with a cheque, dated May 01, 2020, which included \$1,500.00 for rent for May and \$500.00 for a pet deposit;
- the “P.D.” he wrote on that cheque represented the words “pet deposit”;
- although he discussed purchasing bulk quantities of meat with the Landlord, they did not agree to do so and the Landlord did not give him \$500.00 to purchase meat;
- he has not complied with the Landlord’s written direction to remove the cats.

The Tenant submitted a copy of the cheque, dated May 01, 2020, on which the Tenant wrote “May 2020 Rent + P.D”.

In the “Details of Causes” section of the One Month Notice to End Tenancy for Cause,

the Landlord declared that the tenancy was ending, in part, because the Tenant has not complied with the “breach notice” requiring him to end the business he is operating out of the rental unit.

In support of the allegation that the Tenant is breaching a term of the tenancy agreement by operating a business out of the rental unit, the Landlord stated that:

- operating a business out of the rental unit is against a locally bylaw;
- he is not aware of anything in the tenancy agreement that prevents the Tenant from operating a business from the rental unit;
- the Tenant is in the business of selling used appliances;
- he served the Tenant with written notice to cease operating a business from the unit;
- the Tenant has not stopped selling appliances from the rental unit;
- he last viewed the appliances on March 06, 2021, at which time they were not stored in a safe manner; and
- he has not viewed the appliances since March 06, 2021.

In response to the allegation that the Tenant is breaching a term of the tenancy agreement by operating a business out of the rental unit, the Tenant stated that:

- he sells used appliances to earn extra income; and
- there is nothing in the tenancy agreement that prevents the Tenant from operating a business from the rental unit.

In the “Details of Causes” section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the appliances the Tenant is selling are a “suffocation hazard”. In support of this submission the Landlord stated that:

- there are approximately one dozen appliances stored outside the rental unit;
- these appliances are a safety hazard as a child could crawl into the appliance and be trapped if the door accidentally closes; and
- the Tenant has not removed the appliances even after being given many warnings.

In response to the allegations that his appliances are stored in an unsafe manner, the Tenant stated that:

- he currently has approximately 6 used appliances stored outside of the rental unit;
- he did not comply with the Landlord’s request to remove his used appliances from the property as it is his “side” business;

- on March 06, 2021 he began storing the appliances in a manner that would prevent children from crawling into them, after being shown a document from the Landlord's insurance company; and
- he does not believe the appliances are a safety hazard.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant is selling meat from two commercial freezers. The Tenant stated that he does not sell meat on a regular basis, although on occasion he will approach a friend to see if they wish to share a bulk meat purchase. The parties agree that the Tenant has asked the Landlord if he would like to jointly purchase a quantity of meat.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has installed security cameras at the property, which has damaged the walls. The Tenant stated that he installed security cameras with the permission of the Landlord, which the Landlord denies.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has dug a large hole in the backyard and planted a garden. The Tenant agrees that he planted a raised garden in the yard that is intended for his private use.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has installed cabinets in the bathroom and kitchen. The Landlord and the Tenant agree that the installed one additional cabinet in the kitchen and that he replaced a cabinet in the bathroom. The Tenant stated that he replaced the cabinet in the bathroom because the existing one was rotting, and that he had the Landlord's permission to do so.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has installed a "gas pipe". At the hearing the Landlord explained that the Tenant replaced electric appliances that were provided with the tenancy with gas appliances, for which gas lines needed to be installed. The Landlord contends the gas lines are dangerous. The Tenant stated that he replaced the existing appliances with his appliances; that some of those appliances are gas and were installed by a qualified technician; and that he intends to return the Landlord's appliances when the tenancy ends. The Tenant stated that the Landlord gave him permission to replace the appliances when this

tenancy began, which the Landlord denies.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has damaged some upstairs doors. The Landlord and the Tenant agree that some upstairs doors were damaged during the tenancy. The Tenant stated that the doors were replaced approximately one week ago. The Landlord stated that he did not know the doors had been replaced.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has removed the stair railing and damaged the wall. The Tenant stated that he replaced the railing on the same day the Landlord directed him to do so. The Landlord stated that the railing has been replaced with a different railing, which the Tenant denies.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because in October of 2020 the Landlord received a warning that the Tenant was breaching a bylaw related to the property being untidy or unsightly. The Landlord submits that the bylaw officer advised him he would be fined if the situation was not rectified.

The Landlord and the Tenant agree that the Landlord informed the Tenant of the untidy/unsightly bylaw infraction and that the Tenant cleaned the exterior within a day or two. The parties agree that no further bylaw infractions have been reported.

In the "Details of Causes" section of the One Month Notice to End Tenancy for Cause, the Landlord declared that the tenancy was ending, in part, because the Tenant has been disturbing the neighbours, by screaming. The Landlord stated that the neighbours being disturbed are not his tenants and do not live on this property.

At the hearing the Landlord attempted to discuss reasons for ending the tenancy which were not listed on the "Details of Causes" section of the One Month Notice to End Tenancy for Cause. The Landlord was advised he is unable to raise issues that were not listed on this area. I find it would be entirely unfair to the Tenant to permit the Landlord to discuss issues that were not clearly identified on the One Month Notice to End Tenancy for Cause.

The Witness for the Landlord, who is the Landlord's daughter, stated that the Landlord has not complied with the Landlord's directions to remove appliances from the exterior

of the rental unit.

Analysis

On the basis of the undisputed evidence, I find that on January 22, 2021 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*. When a landlord wished 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 pursuant to that section.

Sections 47(e)(i) and (ii) 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 engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, or has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with notice of his intent to end the tenancy pursuant to sections 47(1)(e)(i) and (ii) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has engaged in illegal activity. Even if I accepted that the Tenant was breaching a local bylaw by operating a business out of his home or by maintaining untidy or unsightly premises, I would find that these breaches are not grounds to end the tenancy pursuant to section 47(1)(e) of the *Act*. In my view, these grounds require much more serious forms of illegal activity, typically a breach of the Criminal Code or similarly serious statutes. I therefore find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(1)(e) of the *Act*.

Section 47(1)(h) of the *Act* permits a landlord to end a tenancy if the 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. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with notice of his intent to end the tenancy pursuant to section 47(1)(h) of the *Act*.

A material term is a term that the parties both agree is so important that the most trivial breach of the term gives the other party the right to end the agreement. In the absence of evidence that establishes the parties clearly discussed that pets were not permitted; I cannot conclude that the parties agreed that pets were a material term.

Even if I accepted the Landlord's submission that the words "No Pets" were written on

the tenancy agreement when the agreement was signed, I would not conclude that having pets was a material term of the tenancy agreement. Given that these words were written beside the area intended to record a pet damage deposit, I find it entirely possible that the Landlord was simply declaring that the Tenant had not pets and, as such, a pet damage deposit was not required.

I favor the testimony of the Tenant, who stated that he paid a \$500.00 pet deposit in May of 2020, over the testimony of the Landlord, who stated that a pet deposit was not paid. I find the cheque for \$2,000.00, dated May 01, 2020, on which the Tenant wrote May 2020 Rent + P.D", supports the testimony of the Tenant. I find the Tenant's explanation that the initials "PD" represents "pet deposit" is far more credible than the Landlord's explanation that the initials represent "previous debt". Not only do I find it unusual a person would use the term "previous debt", the Landlord has failed to establish that the Tenant owed the Tenant \$500.00 from some previous debt.

As I have concluded that the Tenant paid a pet deposit of \$500.00 in May of 2020, I find that the Landlord agreed the Tenant could have cats. I therefore find that the Landlord does not have the right to end this tenancy because the Tenant has two cats.

The Landlord submits that there are grounds to end the tenancy pursuant to section 47(1)(h) of the *Act* because the Tenant did not stop selling used appliances from the rental unit after the Landlord gave him written notice to do so. I find that the Landlord has failed to establish there is a term in the tenancy agreement that prevents the Tenant from selling used items from the rental unit. In reaching this conclusion I was heavily influenced by the Tenant's submission that no such term exists and by the Landlord's testimony that he is not aware of anything in the tenancy agreement that prevents the Tenant from operating a business from the rental unit. As there is nothing in the tenancy agreement that prevents the Tenant from selling used appliances from the rental unit, the Landlord has failed to establish that the Tenant is breaching a material term of the tenancy by selling appliances. I therefore find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*.

Sections 47(1)(d)(i) and (ii) of the *Act* permits a landlord to end a 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. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with notice of his intent to end the tenancy pursuant to sections 47(1)(d)(i) and (ii) of the *Act*.

Even if I accepted the Landlord's evidence that the Tenant continues to store appliances in his yard in a manner that could pose a safety risk to children, I would not conclude that this would be grounds to end the tenancy pursuant to sections 47(1)(d)(i) or (ii) of the *Act*. While it is commonly understood that storing appliances without ensuring children cannot open the doors and crawl inside is unsafe and unwise, I find that the risk does not "seriously jeopardize the health or safety or a lawful right or interest of the landlord or another occupant" nor does it put the landlord's property at "significant" risk.

Sections 47(1)(f) of the *Act* permits a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with notice of his intent to end the tenancy pursuant to sections 47(1)(f) of the *Act*.

Even if I accepted that the Tenant was selling meat out of the rental unit, I would not find that was grounds to end the tenancy pursuant to sections 47(1)(h) of the *Act*, as it is not a breach of a term of the tenancy agreement. I would not find it was grounds to end the tenancy pursuant to sections 47(1)(d)(i) and (ii) of the *Act*, as it does not seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, nor does it put the landlord's property at significant risk. I would not find it was grounds to end the tenancy pursuant to sections 47(1)(f) of the *Act*, as it has not caused extraordinary damage to the residential property.

I find that installing security cameras at the rental unit, planting a raised garden bed in a yard intended for the private use of the tenant, and/or installing an extra cabinet in the kitchen are not grounds to end this tenancy pursuant to section 47(1)(d)(ii) or 47(1)(f) of the *Act*, as those acts do not put the Landlord's property at risk nor did it cause extraordinary damage. Any damage caused by the installation of those items can be easily repaired, which the Tenant is obligated to do at the end of the tenancy.

On the basis of the undisputed evidence, I find that the Tenant replaced a cabinet in the bathroom. I have insufficient evidence to determine whether the Tenant was telling the truth when he said he had permission to do so or whether the Landlord was telling the truth when he said the Tenant did not have permission to do so. Even if I accepted that the Tenant had replaced a bathroom cabinet during this tenancy, however, I would not end the tenancy for that reason as that did not put the Landlord's property at risk nor did it cause extraordinary damage. The Tenant has an obligation to replace the original cabinet at the end of the tenancy or, if that is not possible, to compensate the Landlord

for any losses associated to the loss of the original cabinet.

Even if I accepted the Landlord's testimony that the Tenant installed gas appliances in the rental unit without his permission, I would not end the tenancy for that reason as that did not put the Landlord's property at risk nor did it cause extraordinary damage. In reaching this conclusion I was heavily influenced by the Tenant's testimony that he still has the Landlord's appliances and that he intends to replace them at the end of the tenancy. In reaching this conclusion I have placed no weight on the Landlord's submission that the gas lines are dangerous. The Landlord submitted no evidence to support this submission; it is my understanding the gas lines are commonly used in appliances in homes; and I find it quite likely that the presence of gas lines actually improves the value of the rental unit.

Tenants are required to repair damage that occurs during their tenancy if the damage is a result of the actions or neglect of the tenant. On the basis of the undisputed evidence, I find that some doors were damaged during the tenancy and that the Tenant has complied with his obligation to repair that damage. I therefore find that the Landlord does not have the right to end the tenancy for this reason.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant replaced an interior railing with a different railing. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony the railing is different or that refutes the Tenant's testimony that the railing is the same one. I therefore find that the Landlord does not have the right to end this tenancy for this reason.

On the basis of the undisputed evidence I find that in October of 2020, the Tenant was breaching a bylaw related to the property being untidy or unsightly; that the situation was rectified in a reasonable period of time; and that there have been no further bylaw infractions. Given that the infraction was rectified in a reasonable time and that there have been no further infractions, I find that the Tenant has not seriously jeopardized lawful right or interest of the landlord, and I find that the Landlord does not have the right to end the tenancy for this reason.

Section 47 of the *Act* permits a landlord to end a tenancy for various reasons. It does not permit a landlord to end a tenancy if the tenant is disturbing people who do not live on the residential property. I therefore find that the Landlord does not have the right to end this tenancy, even if the Tenant is disturbing the peace and quiet of a neighbour, who is not a tenant of the Landlord and does not live on the same residential property.

Conclusion

The Tenant's application to cancel this One Month Notice to End Tenancy for Cause is granted, as the Landlord has failed to establish grounds to end this tenancy for the reasons cited on the One Month Notice to End Tenancy for Cause.

In an attempt to provide some clarity for this tenancy however and to ensure it can move forward in a manner that complies with the Act, I strongly recommend that the Tenant make no further changes to the rental unit unless he has written permission from the Landlord to do so. The Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy for Cause if the Tenant makes further changes to the rental unit.

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 30, 2021

Residential Tenancy Branch