



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenants (hereinafter “tenant”) filed an Application for Dispute Resolution (the “Application”) on June 10, 2021. They seek an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the landlord on May 31, 2021. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 8, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing.

At the start of the hearing the tenant stated they served notice of this hearing to the landlord. They prepared and submitted one document: a copy of the One-Month Notice. The landlord did not prepare documentary evidence for this hearing. On this basis, the hearing proceeded.

Issues to be Decided

Is the tenant entitled to a cancellation of the One Month Notice?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

Neither party submitted a copy of the tenancy agreement. Each party confirmed the basic terms of the tenancy: a rent amount of \$1,500 for the tenancy that started on January 1, 2021. The tenant presented they were not aware of the no smoking policy in the building.

The copy of the One-Month Notice document in the evidence shows the landlord issued it on May 31, 2021. On page 2 the landlord indicated they served it to the tenant in person on that date. The tenant confirmed this in the hearing.

On page 2 of the document, the landlord indicated the following:

- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- ☐ Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

On page 3 the landlord listed details:

- the building is non smoking – tenant has been smoking crack and cigarettes in their suite
- tenants &/or tenant's friends have broken into the central mailbox and have stolen mail from other tenants
- tenants &/or tenants friends have broken into the coin laundry machines & have stolen coins

In the hearing, the landlord described the tenant's actions that caused concern and prompted their issuance of the One-Month Notice. These are:

- from the first day of the tenancy the tenant was smoking, despite being told many times – the landlord tells this to all tenants at the start of any tenancy
- the landlord probably called twenty times to the tenant to reiterate this rule – then they heard “we smoke outside” from the tenant; however, later in some inspection visits the landlord observed ashtrays, and observed ashtrays and paraphernalia on the stove, on the counter when they visit
- smoke from the balcony comes in through the open door – smoke wafting elsewhere causes neighbour complaints
- break-ins to the central mailbox started when the tenant moved in – this caused Canada Post to stop delivery altogether on a couple of occasions
- the landlord found pieces of stolen mail in the garbage, with a bunch of individual pieces addressed to the tenant – the landlord thus concludes the stolen mail was in the tenant’s possession at some time
- the coin receptacle in the laundry unit was broken into around 20 times – the laundry room entrance is locked, so the only parties with entry to this undamaged entry lock are building tenants
- the landlord described how a magnet-rod contraption is used to retrieve coins from the interior of the washing machine

In the hearing, the tenant responded to both the issues as set out on the One-Month Notice, and the landlord’s testimony:

- the landlord observed the ashtray within the unit in the first week of the tenancy – after that, they use the balcony for smoking
- the washing machines were subject to theft prior to the tenant moving in; another manager worked there and since they were fired, the thefts have stopped
- since this manager was fired, there have been no problems with either the laundry or mailbox thefts – “the landlord had problems with that guy”
- the tenant on their own “caught the guy” who was breaking into the washing machine, got the stolen money from the guy, and gave it to the landlord – at that time the landlord informed the tenant that the landlord on their own was the only person doing collection from the laundry.

The landlord responded to say they thought the story of the tenant confronting the true coin thief was a fabrication. The landlord claimed since the affected area on the washing machine was now welded shut, the thefts continued until about 2 or 3 weeks prior to the hearing. They maintained the ashtrays and odour of smoke was still present; therefore, the tenant is still smoking inside the rental unit.

In summary, the tenant, via their advocate, provided that there is very little evidence from the landlord overall to support the details of the causes listed. These are a lot of false accusations that are exaggerated.

Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. On my review, they have not provided sufficient evidence to prove the details they indicate on page 2 of the One-Month Notice. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

The landlord did not provide specific information on dates, times and number of incidents involving the tenant. They did not present that the matters of theft – both in the case of coins from laundry and, more seriously, mail – were investigated to the fullest extent possible. There was no statement that police were informed or notified, this despite matters starting near the beginning of the tenancy which was in 2019. As such, I find it more likely than not that each of these charges is speculative. These are more serious matters of theft; however, there must be sufficient evidence to end the tenancy on these grounds.

On smoking, the landlord similarly did not provide a list of specific incidents and what they observed. I find it more likely than not the tenant is continuing to smoke on the balcony; however, this is not definitively proven to be against the rules. If it is causing a problem for other tenants, this is not documented with respect to dates or a count of the number of complaints.

Without more detail on specific incidents from the landlord, I find the One-Month Notice is not valid. The landlord has not met the burden of proof; I so order the One-Month Notice to be cancelled.

Conclusion

For the reasons above, I order the One-Month Notice issued on March 11, 2021 is cancelled and the tenancy remains in full force and effect.

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

Dated: October 12, 2021

Residential Tenancy Branch