



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC, FFT
Landlord: OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “**Act**”).

The tenant requested:

- cancellation of the One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord requested:

- an Order of Possession pursuant to section 55;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and his father (assisting the tenant) attended the hearing. The property manager and the building manager [landlords] represented the landlord. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with section 88 and 89 of the *Act*.

All parties were clearly informed of the Residential Tenancy Branch (RTB) Rules of Procedure about behavior including Rule 6.11 which prohibits the recording of a dispute resolution hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, that person will be referred to the RTB Compliance and Enforcement Unit for the purpose of an investigation under the *Act*. All persons present confirmed they understood.

Preliminary Issue – Change of Code

The applicant filed a Notice of Dispute under code “CNR”, which is cancellation of a 10 Day Notice for Unpaid Rent. The document under dispute is a One Month Notice to End Tenancy for Cause. With the parties’ permission, the code was changed to “CNC” to reflect the One Month Notice to End Tenancy for Cause.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the One Month Notice to End Tenancy for Cause pursuant to s. 47 of the *Act*;
- 2) recover the filing fee pursuant to s. 72 of the *Act*?

Is the landlord entitled to:

- 1) an order of possession pursuant to s. 55 of the *Act*;
- 2) recover the filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The tenant and a co-tenant entered into a written fixed term tenancy agreement with the landlord commencing October 1, 2019 through September 30, 2020. The tenancy then converted to a month- to- month tenancy starting October 1, 2020. Monthly rent is \$1575.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$787.50. The landlord still retains this deposit. A copy of the tenancy agreement was submitted into evidence by the property manager.

The tenant gave the following testimony. In 2019, the tenant and co-tenant rented the apartment together. They co-signed the rental agreement. The tenant stated that the “no smoking requirement” may have been communicated at that time. In the two years, the landlord only received one complaint – a noise complaint, which was corrected and did not happen again.

The tenant admitted smoking on the patio in contravention of the no smoking policy in the tenancy agreement. He placed the blanket on the floor of the patio to protect the floor from the debris of a woodworking project. On August 7, 2021, the tenant went onto his patio and smoked a cigarette. He closed the sliding doors, went into his bedroom and was on his computer. Unbeknownst to the tenant, the blanket caught fire and began smoldering.

The building manager came into the apartment but neither she nor he could smell smoke inside the apartment. They stepped out into the hall and the hall “smelled smokey”. Awhile later, the building manager returned after identifying the source of the smoke was from the tenant’s patio. Later, the tenant had a brief conversation with the building manager who advised him that she “had to” evict him over the incident. He felt it unfair of her to evict rather than give a warning because he and his co-tenant were good tenants for the previous two (2) years and he “owned his mistake”.

The tenant said the incident “got in [my] head” and “caused a lot of stress”. He felt “just awful about it” and takes “full responsibility for the fire and damage”. The tenant testified that he no longer smokes on the patio. His roommate “packed up and disappeared” after the incident, and the tenant is now “stuck here on [my] own”.

The tenant stated that he filed the application to dispute the One Month Notice because the rental market is a tough market these days and he feels that a warning, not eviction, is fair. The only evidence the tenant submitted was the One Month Notice. The co-tenant did not attend the hearing or provide a written statement.

The tenant was provided the opportunity to rebut the testimony of the landlord. He provided no new and significant information.

The landlord’s agent testified that she is the building manager of the complex and her job, in part, is to ensure the health and safety of the residents and to ensure the landlord’s property is not put at risk.

The building manager confirmed the tenancy began about two (2) years ago. The tenant and co-tenant signed the lease. The tenancy agreement stipulates that the building/complex is “smoke free” and all prospective tenants are advised in advance of signing the tenancy agreement that an important condition of the tenancy is the no-smoking policy. The building manager testified that ‘no one moves in without reading and signing the no-smoking addendum in the tenancy agreement’.

The building manager stated that when the tenants came to sign the tenancy agreement, she looked both tenants in the eyes and said, “This is a non-smoking property”. She went over the terms of the addendum and pointed out exactly what types of smoke were prohibited. The tenant and his roommate assured the building manager that they both were “non-smokers”.

The building manager testified that on August 7, she received a text from the residents above the tenant’s apartment telling her they smelled smoke in their apartment. The building manager went to the tenant’s apartment, knocked on the door but no one answered the door. She used her pass key and entered the unit announcing that she was looking for the source of smoke. The tenant came out of the bedroom. The building manager looked around inside the apartment but could not find the source of the

smoke. The patio doors were shut. She then knocked on the door of the neighboring apartment and, again, did not find the source of the smoke.

Unable to identify where the smoke inside the building was coming from, the building manager went outside into the parking lot to see if she could identify the source of the smoke from outside of the building. She saw smoke coming from the tenant's patio. She went back to the tenant's apartment and onto the patio. The blanket was smoldering and glowing red. She folded the embers into the center and took the blanket outside and hosed it down. She did not want to throw the blanket over the rails in case the embers landed on someone else's patio or became airborne and caught something else on fire. The building manager testified she opened the fire door and the roof door to air the smoke from the building.

The building manager submitted two (2) photos and a mp4 video taken at the time of the incident:

- the burned blanket; a coffee can half full of cigarette butts; woodworking equipment; a second coffee can (photo);
- a close-up of the coffee can with cigarette butts; an empty cigarette package under a table; a cigarette butt on the ground; the charred blanket; and other miscellaneous debris (photo);
- video showing smoke from the burning blanket; a table with multiple flammable items on it, along with cigarette packages.

The building manager testified that not only did the fire put other tenants at risk, the bottom floor of the building houses commercial properties, and those properties were also put at risk. The dress store complained of smoke but none of the merchandise sustained smoke damage.

The building manager stated [as landlords] they are "very lenient with tenants" but the non-smoking policy is a "big deal". In some circumstances a tenant may be issued a warning but given the seriousness of the situation (smoking, smoke, and a fire) a One Month Notice was issued.

The building manager stated that although she suspected that the tenant was smoking on the patio for a long time, she did not have hard evidence. She said, 'with proof, a warning is issued – a warning is not issued based on something suspected'.

The property manager provided her evidence. She testified that both tenants were registered tenants, although one of the tenants left without notice thereby breaching the lease. The landlord does not want to continue the lease.

The property manager stated that it is the property management company's policy to issue a One Month Notice for serious violations. They do not give warnings for serious incidents. She confirmed the building manager's evidence that warnings may be issued depending on the situation. Situations are assessed on a case-by-case basis. The

property manager referenced the incident report written by the building manager and sent to the property manager that details the sequence of the event and which forms part of the evidence package the landlords provided. The report was uploaded into evidence by both landlords.

The property manager reiterated that the tenants signed the no-smoking policy, a material term, as an addendum to the tenancy agreement. The signed addendum was submitted into evidence along with the tenancy agreement.

The property manager testified that on September 13, 2021, she received a complaint from a resident about “someone” smoking on the tenant’s patio. The property manager stated that although the tenant expressed remorse and said that he no longer smokes on his patio, the evidence suggests otherwise. The complaint was referenced and forms part of the landlord’s evidence package.

Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of the parties’ submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims, and my findings are set out below.

I have not relied on any evidence of events which occurred after the One Month Notice to End Tenancy was issued on August 10, 2021, in making my decision. While the information may provide corollary evidence, it is not relevant to prove whether the landlord had cause to issue the One Month Notice issued August 10, 2021. That evidence would include, without limiting the generality of the foregoing, any additional notices issued and any instances of non-compliance occurring after August 10, 2021.

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute the Notice by making an application for dispute resolution within ten (10) days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Notice.

As the tenant applied to cancel the One Month Notice, the landlord bears the burden of demonstrating, on a balance of probabilities, that this tenancy should end for the reasons stated on the One Month Notice to End the Tenancy, for Cause.

The landlord issued the One Month Notice pursuant to s. 47(1)(d)(ii) (iii) of the *Act*. In order to end this tenancy, I must be satisfied the landlord provided sufficient evidence to show the tenant committed any one of the following:

- **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

When the tenants signed the tenancy agreement, which included the no smoking addendum, both men told the building manager that they were non-smokers. Although the tenant testified that he “may” have been told at the start of the tenancy that the property was a non-smoking property, the signed addendum to the tenancy agreement shows he was aware of the policy from the start of the tenancy. He later testified he was aware of the no-smoking policy; yet disregarded the policy by smoking on his patio. This choice resulted in the blanket catching fire, with smoke reported in the unit above, in the hallways, and the businesses below.

While the tenant expressed regret for the damage caused by the fire and said that he accepted full responsibility for damage; he offered no apology for breaking the non-smoking covenant. He offered no explanation for ignoring the non-smoking policy and showed no awareness of the potential consequences a fire could have had. Rather, the tenant's defence was that he and his co-tenant were “good tenants” for the past two (2) years and; therefore, the Notice to End Tenancy for Cause was unfair and should have been a warning.

Turning to the “details of cause” listed in the landlord's notice to end tenancy, the One Month Notice was issued under s. 47(1)(d)(ii) (iii) of the *Act*. Unlike s. 47(1)(h), breach of a material term, s. 47(1)(d) does not require the landlord provide written notice to correct the situation. Any written notice or warning provided under s. 47(1)(d) is at the discretion of the landlord.

I find the landlords provided credible testimony and evidence; their account of what happened is reliable and believable. The landlord established the sequence of events and substantiates their testimony with documentary evidence including photos and a video that supports, on a balance of probabilities, the tenant seriously jeopardized the health or safety of the other tenants and put the landlord's property at significant risk.

The One Month Notice to End Tenancy for Cause is in the approved form and contains the information required by the *Act*. In the circumstances described above, I find no reason to cancel the Notice. I dismiss the tenant's application to cancel the One Month Notice to End the Tenancy, without leave to reapply.

As the tenant was unsuccessful in his application to cancel the One Month Notice, I dismiss the tenant's application to recover the filing fee, without leave to reapply.

The *Act* specifies that if I dismiss a tenant's application to cancel a notice to end a tenancy given by the landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favor 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.

The landlords were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to s. 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to s. 55 of the *Act*, I order that the tenants deliver vacant possession of the rental unit to the landlords **within two days of being served** with a copy of this decision and attached order(s) by the landlord.

The landlords are entitled to retain \$100.00 from the tenant's security deposit.

I have dismissed the tenant's application for an Order to cancel the One Month Notice to End Tenancy. There will not be recovery of the filing fee to the tenant.

The landlords must serve the tenant with a copy of this decision and Order as soon as possible.

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: December 29, 2021

Residential Tenancy Branch