Dispute Resolution Services

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

The tenant and an agent for the landlord attended the hearing and the tenant was assisted by an Advocate. The tenant and the landlord's agent gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided 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 was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on July 15, 2018 and reverted to a month-to-month tenancy after July 31, 2019, and the tenant still resides in the rental unit. Rent in the amount of $875.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $437.50 as well as a pet damage deposit in the amount of $200.00, both of which are still held in trust by the landlord. The rental unit is a basement suite, and the upper level is also rented; neither the

landlord nor the landlord's agent reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on November 27, 2021 the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause by placing it in the tenant's mailbox. A copy has been provided by both parties for this hearing, and it is dated November 27, 2021 and contains an effective date of vacancy of December 31, 2021. The reasons for issuing it state:

- 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.

Firstly, there was a flood in the tenant's bathroom that the tenant didn't tell the landlord about. The tenant noticed it, but didn't call the landlord or the landlord's agent. The tenants upstairs mentioned it, but the landlord's agent didn't know what kind of flood it was. The tenant finally sent a photograph of the ceiling about a month ago, which has also been provided for this hearing. It shows water stains on a ceiling.

The landlord's agent further testified that he informed the tenant that the landlord's agent received a complaint from the upstairs tenant, and wanted a statement from the tenant about an incident that occurred on November 12, 2021. A copy of the complaint from the upstairs tenant has been provided for this hearing. It states that on November 12, 2021 the pungent second-hand smoke upstairs was overwhelming. It also states that the upstairs tenant had a conversation with the tenant in the basement suite stating that the smoke travels through the water pipes and goes through the washroom into the kids' rooms. A conversation ensued wherein the tenant told the upstairs tenant to not tell the tenant what to do, and raised a fist, which frightened the upstairs tenant. The complaint also states that according to the tenancy agreement of the upstairs tenant an Addendum exists stating that smoking is to take place outside of the suite or at the upper balcony.

The tenant didn't reply to the requests of the landlord's agent for a statement. After about 10 days the landlord's agent asked again by text message, stating that since the tenant hadn't answered, the landlord's agent must believe the complaint from the upstairs tenants. On November 27, 2021 the landlord also requested a statement, because it was necessary to hear both sides of the story. The tenant never responded.

The landlord's agent also asked on December 6, 2021 and the tenant's reply was that the tenant had to speak to an Advocate, but never provided a statement to the landlord about the incident on November 12, 2021.

The landlord's agent went into the upstairs tenant's suite once he was aware of a leak in the bathroom of the lower level suite to see if there was any leaking, but didn't see any.

The tenant sent a text message to the landlord's agent but the numbers confused the landlord's agent. The landlord's agent had been using a phone number listed in the tenancy agreement for the tenant, but the tenant sent a message from a different number.

The Application to Rent forms part of the tenancy agreement, which states that the tenant didn't smoke, but that was false information. On December 2, 2021 the tenant said that he did smoke in the house on November 12, 2021 and turned on the vent. Smoke goes everywhere in the house.

Police attended the rental unit, but the landlord's agent found out later about that. It was not the landlord's problem, and the landlord's agent doesn't know who is right or who's providing false information; that's not part of the job of the landlord's agent.

The tenant testified that on May 9, 2021 the tenant changed his phone number and wasn't getting the messages of the landlord's agent. The tenant had given the new number directly to the landlord on May 9, 2021.

The tenant has provided video evidence, which he testified shows the angry attitude of the tenant upstairs and screaming. Eventually the tenant called police so that he wouldn't have to listen to her.

The tenant smokes outside at a shed, which is about 15 or 20 feet away from the rental unit. It's an open area by the garage. When the tenant couldn't get ahold of the landlord's agent, the tenant smoked in the bathroom with the fan on so that he could get someone to pay attention. The tenant wanted to make a complaint about what was coming through the bathroom ceiling.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenant assumes that people do things against him, but the landlords are all friendly. There has been no increase in rent, and there is no benefit to ignore the tenant. The landlord's agent and the landlord asked for statements but the tenant didn't provide any.

The video provided by the tenant was taken 2 years ago and the upstairs tenants were very unhappy about their loss of privacy.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The landlord has failed to resolve issues between the neighbours, to the extent of issuing a notice to end the tenancy instead of a warning letter about all issues, not just smoking. Given that there is a shortage of housing, perhaps conditions by both tenants could be arranged, rather than ending the tenancy.

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. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act.* The reasons for issuing it are in dispute.

I have reviewed all of the evidence. It is clear from the testimony of both parties that the landlord's agent was attempting to get a statement from the tenant about an incident that allegedly took place on November 12, 2021, but was sending the messages to an incorrect phone number.

An Application to Rent is just that; an application. It does not form part of a tenancy agreement, and there is nothing in either the tenancy agreement or the application indicating that smoking on the rental property is not permitted, even if the tenant indicated in the Application to Rent that he didn't smoke. That is not contrary to the *Act* or the tenancy agreement.

The landlord's agent also testified that the tenant didn't tell the landlord about a flood, however from the photograph provided, I am not satisfied that a "flood" existed. There appears to be some water stains on a ceiling, and perhaps there is or was a leak.

I agree with the tenant's Advocate, that given the rental shortages, a landlord must be able to establish that the tenant knew of a breach and the landlord gave the tenant warnings to indicate that continuing a breach would jeopardize the tenancy. That didn't happen in this case.

I am not satisfied in the circumstances that the landlord has established that the tenant or a person permitted on the property by the tenant has caused a significant

interference or unreasonable disturbance that would justify ending the tenancy, or that smoking is prohibited. Nor am I satisfied that the landlord has established that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk. Therefore, I cancel the One Month Notice to End Tenancy for Cause, and the tenancy continues.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated November 27, 2021 is hereby cancelled and the tenancy continues.

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: March 20, 2022

Residential Tenancy Branch