



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Code: CNC

Introduction

The tenant sought to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (the “Act”).

A hearing was held on February 16, 2023 at 11 AM. Three representatives for the landlord attended the hearing. The tenant did not attend the hearing which ended at 11:11 AM.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

In reaching this decision, I have only considered the landlord’s affirmed oral and documentary evidence, argument, and submissions. I have not considered any evidence or written submissions of the tenant, as he did not attend the hearing.

The landlord’s representative (C.S.) testified under oath that she issued the Notice on September 26, 2023 by in-person service upon the tenant. The landlord and the building manager (P.D.) both attended for this in-person service, and they spent about half an hour in conversation with the tenant. A copy of the Notice was in evidence.

The Notice was issued because the tenant is required under the tenancy agreement (in evidence) to maintain cleanliness, but he has repeatedly breached that requirement. The reason for the Notice being issued is stated on page two of the notice.

Term #6 on page two of the tenancy agreement states, in part, that the tenant “is responsible for the ordinary cleanliness of the Suite, the amenities and facilities provided for in this Agreement [. . .]” The tenant signed the tenancy agreement on September 27, 1991.

The landlord testified that they have issued several warning letters spanning a period from June 7, 2021 to September 6, 2022. Copies of those letters were in evidence. Despite the letters, and despite the tenant having made some effort to bring the rental unit to a state of cleanliness, it has been “getting worse.” Several photographs taken on September 26, 2022 of the interior of the rental unit were submitted into evidence.

The landlord speculated that the tenant is now in denial about the situation. The situation has gotten to the point where stuff is now simply moved from room to room. But it is more than just boxes and various personal property: now there is garbage and food and food containers left laying about. This has resulted in mice; other tenants in adjacent and nearby apartments have complained about the presence of mice. And a pest control company observed mice tracks on the floor of the rental unit.

While the landlord has contacted the tenant’s family, and a government ministry, there is little that any other party has been able to do to assist the tenant in resolving the issue. The situation has deteriorated to the point where, according to the landlord, the lack of cleanliness now poses a hazard to the tenant.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

However, in some situations, the onus of proof is on the other party. In this dispute, because the tenant applied to cancel the Notice, the landlord must establish the reason they wish to end the tenancy. (Rule 6.6 of the Rules of Procedure.)

The landlord testified and provided evidence that the Notice was given under subsection 47(h) of the Act because the tenant (i) has failed to comply with a material term of the tenancy agreement, and (ii) has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

The material term in question is term 6, the cleanliness clause, which is reproduced above. This material term basically mirrors section 32(2) of the Act which requires a tenant to “maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.”

In this dispute, the undisputed facts are that the landlord gave several written notices and a more reasonable time for the tenant to correct the situation. Based on the photographs, but more so on the affirmed *viva voce* evidence of the landlord, I am persuaded that the tenant has failed to maintain reasonable cleanliness standards throughout the rental and (insofar as attracting the mice) the other residential property to which the tenant accesses.

A large number of boxes with files is one thing, but having food, food containers, and garbage strewn about—and the resulting attraction of mice—is another. One, I find, that is a breach of a material term of the tenancy agreement and a breach of section 32(2).

Taking into careful consideration all of the undisputed, affirmed oral and documentary evidence before me, it is my finding that the landlord has on a balance of probabilities, firmly and persuasively established the ground on which the Notice was given.

Accordingly, the application to dispute the Notice is dismissed and the landlord's Notice is upheld. Having reviewed the Notice is my finding that it complies with section 52 of the Act in form and content requirements.

Pursuant to section 55(1)(b) of the Act the landlord is thus granted an order of possession of the rental unit. A copy of the order of possession is issued with this decision to the landlord. The landlord must serve a copy of the order of possession upon the tenant.

Conclusion

The application is hereby dismissed.

The One Month Notice to End Tenancy for Cause, dated and served on September 26, 2022, is upheld and the landlord is granted an order of possession of the rental unit.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 16, 2023

Residential Tenancy Branch