



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice").

Both parties appeared or were represented for the hearing. I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted the materials for consideration in making this decision. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Should the One Month Notice be upheld or cancelled?

Background and Evidence

The tenancy started on July 1, 2021. The landlord is holding a \$990.00 pet damage deposit but no security deposit. The tenants' current monthly rent is \$2007.67 payable on the first day of every month.

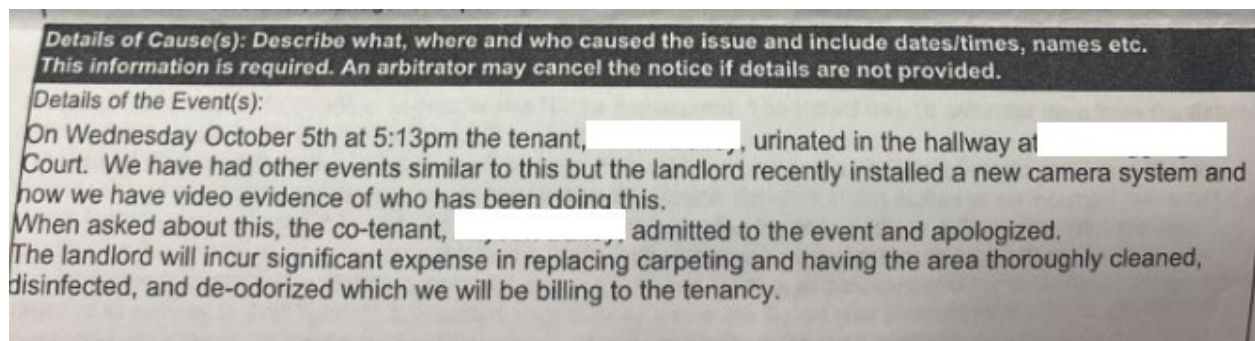
The rental unit is occupied by mother and son, as co-tenants. The son is a young adult described by his mother as having learning disabilities. The tenants also have a large breed dog.

On October 7, 2022 the landlord attached the subject One Month Notice to the door of the rental unit. The tenants filed to dispute the One Month Notice within the time limit for doing so.

The One Month Notice has a stated effective date of November 30, 2022 and indicates the following reason(s) for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

In the Details of Cause on the One Month Notice, the landlord wrote (with names and address omitted by me for privacy purposes):



Below I have summarized the landlord's position and the tenant's responses.

Landlord's position

The building manager testified that she received a complaint from another tenant on October 5, 2022. Below, I have reproduced the complaint (with names and location omitted by me for privacy purposes):

NATURE OF COMPLAINT:

On October 5th, 2022 at 5:10pm, my partner and myself walked down the stairwell from the [REDACTED] floor to the parkade level to our car to get some things out of there. When we were done in the parkade, we went back into the same stairwell 5 minutes later and there was a very strong smell of Urine in there that wasn't there before. We could tell by a very large wet spot on the wall and the smell, that someone had just urinated there. It was disgusting, it was all over the wall and carpet so we notified [REDACTED] the building manager right away so she could check the cameras to find out who went through that stairwell in between that short period of time of when we were there. This has been going on in this building [REDACTED] for the last couple of months, someone urinating in the elevator and the stairwells. We hope they catch whoever is doing this as we have children and other tenants around here that should not be exposed to this ever.

The building manager testified that she checked the security camera videos for the subject time frame identified by the complainant and observed the male tenant leave the rental unit, go down the elevator to the parkade level and then proceed to enter the hallway that leads to the stairway and return to his rental unit on the fourth floor.

The building manager described the physical appearance of the male tenant and she testified that she is familiar with the male tenant's appearance.

The landlord submits that although the male tenant is not actually seen urinating in the hallway in the videos he was the only person to enter the subject hallway during the relevant time period.

On October 6, 2022 the building manager reached out to the tenants and spoke with the female tenant. The female tenant stated she would speak with her son. The female tenant subsequently contacted the building manager, stated her son was apologetic and embarrassed, and that he has bladder issues.

The landlord is of the position the urination is from the tenant, and not a dog, as the urine was detected half way up the wall.

The landlord submitted that there had been two or three previous incidents of urination in the common areas but there was insufficient evidence to determine who was responsible. These events lead to the landlord installing more cameras and/or changing camera angles.

After the incident of October 5, 2022, the landlord had the area cleaned and sanitized and removed the carpet and underlay. The concrete floors under the carpet were levelled and painted to permit easier cleaning in the future.

The landlord is of the position that the urination event is likely intentional and unlikely due to bladder issues or urgency as the male tenant had just left the rental unit, urinated in the hallway and then returned to the rental unit. The landlord views this act as being so egregious and disrespectful that it warrants issuance of a One Month Notice without a warning letter.

Since the issuance of the One Month Notice, there have been no further incidents of urination by the male tenant.

Tenant's position

The female tenant appeared for the hearing, but the tenant's son did not. Accordingly, the male tenant was not subject to direct or cross examination.

The tenant pointed out that there was only a four minute window for the alleged event to have taken place. When the building manager approached her about the incident the female tenant spoke with her son about it but he could not provide a clear answer and he shut down when the female tenant became upset.

The tenant denied telling the building manager that her son has bladder issues or was embarrassed; however, the tenant acknowledged that she communicated to the building manager an apology. When asked to explain why she apologized if her son had not been responsible for the incident the tenant stated she was sorry that the building manager thought it was her son.

The tenant testified that after the incident of October 5, 2022 she observed what appeared to be urine on the floor in front of the elevator and that it could not have been from her son since her son was with her. The tenant sent the building manager a message about the wet spot in front of the elevator. Upon re-direction to the building manager, the building manager agreed the tenant reported this wet spot to her and that after checking the security cameras the building manager saw that it was a dog that urinated in front of the elevator.

The tenant's advocate pointed out that the landlord did not produce the video footage that it is relying upon.

Further, the landlord's position is disproportionate to the alleged incident, especially considering there is a very low vacancy rate, the landlord is speculating that this event was "intentional", and that there are many incidents of urine and feces in this building.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason indicated on the notice. The landlord's burden of proof is the civil standard of: on the balance of probabilities, or more likely than not.

Every tenant is entitled to quiet enjoyment under section 28 of the Act. Further, a landlord is obligated to protect its tenants' right to quiet enjoyment. Under section 28 of the Act, quiet enjoyment includes:

- use of common areas for reasonable and lawful purposes, free from significant interference

As provided under Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment*, where one tenant's actions or negligence causes a loss of quiet enjoyment for another tenant, the landlord is expected to take action against the offending tenant. Below, I have reproduced relevant portions of policy guideline 6:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Since a landlord has a duty to protect its tenant's right to quiet enjoyment, the Act provides a mechanism to end a tenancy for a tenant that is causing other tenants to suffer a loss of quiet enjoyment, as provided under section 47 of the Act, and as indicated on the One Month Notice served to the tenants in this case.

In the case before me, it is alleged that the male tenant urinated in a common hallway that is used by tenants of the building that resulted in a strong odour of urine and obvious wet spots on the wall and carpeting.

Although the female tenant claims her son/co-tenant did not urinate in the hallway, I find I prefer the landlord's evidence, considering the following:

- the landlord produced a copy of the written complaint by the other tenant;
- the building manager's testimony as to what she saw on the video footage was clear and consistent;
- the building manager provided a description of the male tenant that the tenant did not refute;
- the female tenant's initial reaction when speaking with the building manager was to provide an apology which I find inconsistent with her current position that her son did not urinate in the hallway
- the male tenant did not appear at the hearing or otherwise provide any written statement describing the reason he left the rental unit to take the hallway on the parkade level to immediately return to the rental unit through the hallway/stairwell where the urine was sprayed.

Considering the above, I find it is more likely than not that the male tenant is reasonable for urination in the hallway.

I accept that occupants of the building do not expect to encounter the obvious smell and sight of urination in a common hallway and that a reasonable person would find such an experience to be offensive and an interference with their ordinary lawful use and enjoyment of the space. However, to end the tenancy for the reason stated on the One Month Notice, I must be satisfied that the complainant(s) not only suffered interference with their use and enjoyment of the hallway but that they suffered "significant" interference.

The landlord produced a copy of the complainant's letter but the complainant was not called to testify. I see in their complaint that they found the experience to be disgusting, which I accept; however, I did not hear evidence that the hallway became unusable or that the complainants suffered ongoing and repeated interference as a result of this incident. There is reference to previous incidents of urination in the common areas; however, I find there is insufficient evidence to point to the male tenant as being the cause of the previous incidents, especially after hearing evidence that a dog was responsible for at least one of the urine stains. Therefore, I find I am unable to conclude the complainants suffered from "significant" interference due to this one event.

In this case, the landlord did not indicate any other reason for ending the tenancy other than unreasonable disturbance or significant interference of other occupants or the landlord. I cannot select a different reason to end the tenancy that is available under section 47 of the Act and bring the tenancy to an end. Therefore, I must cancel the subject One Month Notice.

Despite cancelling the One Month Notice, the tenants would be well served to familiarize themselves with section 32 of the Act. Section 32 of the Act provides for obligations for a tenant to repair and maintain the rental unit and residential property, including common areas of a property, as follows:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

[My emphasis underlined]

Although I have cancelled the subject One Month Notice, I find the male tenant's act of urinating in the common area to be unsanitary and unclean and a violation of section 32(2) of the Act. Not to mention highly disrespectful and damaging to the landlord's property that caused the landlord to incur losses. Therefore, I find it appropriate to issue the following orders to the tenants pursuant to the authority afforded me under section 62 of the Act:

Effectively immediately upon receiving this decision, I ORDER THAT the tenants MUST NOT cause or permit any urination, feces, or any other liquids or debris to be placed or spilled in the common areas of the property. In the event such a thing were to happen accidentally, the tenant must immediately report it to the building manager and take reasonable action to remedy the situation.

Violation of the above order shall be grounds for the landlord to terminate the tenancy under section 47(1)(l) of the Act, which provides that a tenancy may be ended where:

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

I FURTHER FIND and ORDER that the tenants are liable to compensate the landlord for the cost to clean, sanitize, and de-odorize the area affected by the urine in the hallway on October 5, 2022. To pursue collection, the landlord is expected to present invoices/receipts for the costs to the tenants and if the tenants fail to compensate the landlord the landlord may make an Application for Dispute Resolution to obtain a Monetary Order against the tenants. As co-tenants, the tenants are jointly AND severally liable to compensate the landlord for its losses.

I make no award for recovery of the filing fee.

Conclusion

I have cancelled the One Month Notice; however, I have issued orders to the tenants with this decision.

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 10, 2023

Residential Tenancy Branch