



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE-MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy For Cause or End of Employment, and more time than permitted to dispute the Notice.

The tenant and an agent for the landlord attended the hearing, and the landlord's agent was accompanied by another employee of the landlord company. The landlord's agent and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I learned that the landlord has provided all evidence to the tenant, but the tenant has not provided any evidence to the landlord. Any evidence that a party wishes to rely on must be provided to the other party. Since the tenant has not done so, I decline to consider any of the tenant's evidence. Also, the landlord has provided evidence on July 23, 2023 and the landlord's agent indicated that the late evidence was posted to the tenant's door on July 23, 2023. Documents posted to a door are considered served 3 days after posting, which would be July 26, 2023, 1 day prior to the hearing. Any evidence that a respondent wishes to rely on must be provided to the Residential Tenancy Branch and to the applicant no less than 7 days prior to the hearing. Therefore, I decline to consider the landlord's late evidence. All other evidence of the landlord has been reviewed and is considered in this Decision.

Also, during the course of the hearing the parties agreed that the Notice that the tenant has disputed is not with respect to end of employment, but a One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*?
- Should the tenant be permitted more time than prescribed to dispute the Notice?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$375.00 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 \$187.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single occupancy room. The landlord's agent testified that a copy of the tenancy agreement has been provided as evidence. However, the document entitled "Tenancy Agreement" is not a tenancy agreement at all, but a letter to the tenant dated March 28, 2023.

The landlord's agent further testified that on March 28, 2023 the tenant was served with a One Month Notice to End Tenancy For Cause or End of Employment, by posting it to the tenant's door. A copy has been provided for this hearing and it is dated March 28, 2023 and contains an effective date of vacancy of April 29, 2023. 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;
- 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 of the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant has an electric bike that caught on fire and melted in the building, which had to be thrown outside. A photograph of the burned bike has been provided for this hearing. The tenant continues to bring e-bikes in and when he plugs them in, it causes a burning smell and another employee of the landlord saw smoke coming from the battery, after the initial fire of the e-bike. The tenant had modified it; taped-up wires were coming from it, and the tenant is seen fixing and tinkering with it all the time.

The landlord has provided a copy of an unsigned letter sent to the tenant dated March 28, 2023, stating that on that date the alarm sounded and staff found the tenant carrying an electric bike that was on fire out to the fire escape, caused by a modified battery. It states that the tenant clearly stated he would not remove the bikes and is therefore putting his housing at risk. A Critical Incident Report has also been provided for this hearing.

The landlord does not allege any illegal activity.

On June 30, 2023 the tenant was provided with a Breach letter regarding charging the e-bike in the hallway, and that written statements from numerous tenants indicate that they fear for their safety.

On July 5, 2023 the landlord provided the tenant with another Breach letter regarding a new lock installed by the tenant without providing a key to the front office, which is a breach of the contract and a serious safety issue.

On July 15, 2023 the landlord gave the tenant a breach letter, and a copy has been provided for this hearing. It states that the tenant was charging an e-bike in the lobby and smoke was coming from the battery. It also states that the tenant is not allowed to bring an e-bike in the building or charge the battery in the building. It states that the tenant's housing is at risk because the tenant chooses to put everyone's lives at risk. The landlord has also provided a copy of a note which appears to be dated July 14 at 11:00 p.m. indicating that someone called the landlord's agent about the tenant charging his bicycle in the front lobby using a computer, and there was what seems to be smoke. Another letter is dated July 16 indicating that the person is a tenant, and that the tenant has been charging batteries for his bike again, and the person is afraid a fire will start. The person's letter also states that the person doesn't feel safe because burning is smelled when the tenant charges the batteries.

E-bikes are not allowed in the building due to batteries exploding. The tenant refused entry of the fire department on March 28, 2023, but allowed them in later. The landlord

continues to get complaints that the tenant charges the e-bike in common areas of the hallway. Some staff have removed the battery for safety reasons.

The landlord conducts monthly inspections, and the tenant changed the lock to the rental unit on May 8, 2023 and refuses entry by the landlord somehow or another, every time. The landlord's agent has not received any notes regarding no lock being on the tenant's door.

Ninety percent of the tenants in the building came from a building that burned down, so a lot are traumatized when alarms sound.

The tenant testified that he took the e-bike outside when it started smoking. The tenant cannot carry a burning bike. The fire alarm didn't go off until someone opened the door.

The government is giving grants for e-bikes and the landlord makes it out to be a problem. There is no term in the tenancy agreement prohibiting e-bikes, and others also have them. The landlord's agent picks on people she wants to get rid of. There is no valid reason to not have e-bikes.

The tenant also disputes that he charged the e-bike with a computer. There was no charging, no smoke, no smell and that would be a serious problem. The tenant lost his battery because the landlord threw it out with other bike things that the landlord's agent didn't want the tenant to have. The tenant obtained another battery from a friend, but it was no good.

Once the tenant received the Notice to end the tenancy the tenant's key would not work. The tenant took the frame out to access the rental unit and had no lock for 3 weeks. The lock was jammed or something and the tenant advised an employee of the landlord because he was locked out. The landlord's agent was called, but she wouldn't deal with it. The tenant brought it up a few times. The tenant told the landlord's agent and ended up putting his own lock on it. The next day, the landlord had the lock put back on and gave the tenant a breach letter, and the landlord changed it for no reason. The tenant is allowed to change locks for emergency repairs.

The landlord's agent also told the tenant that it wasn't a real eviction notice. Another person told the tenant that it happened to him, and when the tenant disputed it, the landlord's agent stopped talking to the tenant and won't acknowledge the tenant.

The landlord has provided notice about storage, but not for the immediate, but in the future, perhaps in 30 days.

The tenant received a letter stating that e-bikes were no longer allowed in the building, which also stated that the tenancy agreement would be amended.

The tenant was cleaning out his room when he put some items in the hallway. Common courtesy would be to notify the tenant prior to disposing of the tenant's items, and most times they knock on the door to tell the tenant. However, the landlord didn't dispose of the tenant's items, but gave them to another tenant.

Analysis

Firstly, a tenant must dispute a One Month Notice to End Tenancy For Cause or End of Employment (the Notice) within 10 days after service. In this case, the landlord testified that the Notice was served on March 28, 2023 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 31, 2023. The tenant made the Application for Dispute Resolution on April 13, 2023, which is 3 days later than the law states, but has applied for more time. The tenant testified that the landlord's agent told the tenant that it wasn't a real eviction notice, and also said the same to another tenant. The landlord's agent didn't dispute that, having been given the opportunity to provide testimony, evidence and submissions. Since the tenant's application was 3 days late, and the landlord has not disputed the extra time, I grant the tenant more time to dispute the Notice.

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 Notice 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 landlord's evidence.

There is no doubt that the tenant had an e-bike inside the rental property, which had a malfunctioning battery. The photograph of the burned bike provided by the landlord is taken outside, not inside the rental property. The tenant testified that he took it outside, not burning but smoking, and the alarm didn't sound until someone opened the door. The landlord's agent didn't dispute that and I find it very believable.

The burned bike happened on 1 occasion, which I find was accidental. The landlord has provided notes from another resident and from another employee of the landlord company, both dated well after the incident took place and well after the Notice was

issued. The note from the employee does not indicate any disturbance or interference, just that the tenant was charging the bike in the lobby. The note from the other resident states that the person doesn't feel safe because the person can smell burning when the tenant charges the batteries. That note is dated July 16.

The landlord must establish that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; or seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or put the landlord's property at significant risk prior to the date the Notice is served, not that the landlord had cause to issue it after it was issued.

The landlord does not allege any illegal activity, so illegal activity cannot be considered a reason for ending the tenancy.

In order to end a tenancy for breach of a material term, the landlord must inform the tenant in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

In this case, the landlord has not provided a copy of the tenancy agreement, and therefore, I cannot be satisfied that having an e-bike is a breach of a material term, or a term at all in the tenancy agreement. Further, the landlord has not provided the tenant with a deadline to remove the e-bike. The landlord has provided breach letters, all of which were given after the Notice was issued. The only other breach letter was given the same day as the landlord issued the Notice. Therefore, I am not satisfied that the landlord has complied with the *Act* or proven breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Also, the landlord testified that on May 8, 2023 the tenant changed the lock to the rental unit. Since that allegedly occurred after the Notice was issued, it cannot be considered a reason for ending the tenancy months earlier.

Considering the evidence of the landlord and testimony of the parties, I am not satisfied that the landlord has established any of the reasons for issuing the Notice, and

therefore I cancel it. The tenancy continues until it has ended in accordance with the law.

Conclusion

For the reasons set out above, the tenant's application for more time to dispute a notice to end a tenancy is hereby allowed.

The One Month Notice to End Tenancy For Cause or End of Employment dated March 28, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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: July 27, 2023

Residential Tenancy Branch