



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

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

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on December 1, 2015. The current monthly rent is \$1051.00. The landlord testified that the tenant has paid the rent for November for "use and occupancy only" and that the tenancy was not reinstated. The landlord testified that the tenant has been problematic since April 2016. The landlord testified that they have received over 50 complaints from other tenants since that time for fighting, swearing, loud noises, drinking, and smoking cigarettes and marijuana. The landlord testified that the tenant drinks in the

underground parking lot with another tenant as well as smokes marijuana. The landlord testified that the tenant has been observed urinating around the exterior of the building.

The landlord testified that the landlord has been extra lenient with this tenant because his wife had recently passed away, however, due to the number of complaints and complete disregard for the rules they now seek to end the tenancy. The landlord testified that they have given the tenant nine written warnings. The landlord testified that they served a One Month Notice to End Tenancy for Cause on August 28, 2019 for the following reasons:

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that despite being served a notice to end tenancy, the tenant was observed drunk and disorderly and smoking in common areas on September 21, 2019. The landlord testified that drinking alcohol and smoking of any kind is a breach of their tenancy agreement. The landlord testified that numerous tenants feel threatened and concerned about the tenant's behaviour and have complained they are unable to enjoy their home because of his actions.

The tenant gave the following testimony. The tenant testified that he was extremely depressed after his wife passed away and that he "didn't care what happened". The tenant testified that after he received a "final notice" warning him to stop his behaviour on August 26, 2019; he immediately stopped smoking and drinking. The tenant testified that he was surprised that he was given a notice to end tenancy two days after that. The tenant testified that he will appeal this decision if it doesn't go in his favour as he feels that the landlord wasn't allowed to issue the notice to end tenancy after the "final notice" warning of August 26, 2019. The tenant testified that he was merely helping out an intoxicated friend on September 21, 2019 and that he has changed his behaviour for the better.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord submitted extensive documentation for this hearing. Although some of the warning letters were dated, the tenant gave sworn testimony that "for the most part I agree with

what the landlord said". The tenant did not dispute the landlord's allegations but submits that after he was served the notice to end tenancy, he immediately corrected his behaviour.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord to be a more credible witness than the tenant. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when she could not recall specific facts and, where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlord the tenant chose to ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord's testimony, shouting disagreement with her evidence.

Based on all of the above and on a balance of probabilities, I find that the landlord has provided sufficient evidence to support the issuance of the notice on the ground that the tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, accordingly; I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act. The tenancy is terminated. The landlord advised during the hearing that she is willing to allow the tenant to stay until the end of November to assist him in finding a new home. The landlord is granted an order of possession that takes effect at 1:00 p.m. on November 30, 2019.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated. The tenant's application is dismissed in its entirety without leave to reapply.

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: November 05, 2019

Residential Tenancy Branch