



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CML Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager and Resident Caretaker, TD and JC, and the Tenant, GN, and Assistant, JF, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on January 7, 2022 and provided Proof of Service form #RTB-34 for that document. The Tenant also confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on January 7, 2022 pursuant to Section 88(a) of the Act.

The Landlord confirmed that the Tenant personally served them with the Notice of Dispute Resolution Proceeding package for this hearing on February 4, 2022 (the "NoDRP package"). The Landlord also verified this dispute resolution process by calling the RTB and speaking to an Information Officer. I find that the Landlord was served with the NoDRP package for this hearing on February 4, 2022 in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancelation of the One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on October 1, 2017. Monthly rent is \$700.00 payable on the first day of each month. A security deposit of \$325.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or, iii) put the landlord's property at significant risk; and the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was February 28, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Tenant has on three separate occasions left a pot on his stove, unattended and allowed it to catch fire on two occasions one involving the [city] Fire Dept and another with the entire building filling up with smoke and having the building evacuated. The tenant has been given a number of warning letters in reference to smoking in his unit and has not complied to these concerns, and no smoking is a material term of the agreement.

The Landlord submits the primary reason for this claim is on the basis of building safety. The Landlord testified that over the past year, there have been three documented instances of stovetop fires. The city fire department came twice because of activity in the rental unit: once in February 2019 due to a grease fire on the stovetop; and the second time in February 2021 where the fire alarm system was triggered because of a

pot left burning on the stovetop. The last instance, undated, was caught before the fire department came. The Landlord testified that after an emergency inspection on January 12, 2022, it was determined that the Tenant had tampered with the smoke detector by covering it with a towel while trying to clear out the smoke.

The Landlord uploaded the tenancy agreement and addendum which lists under Section Z, regulation number 18, that '*No smoking permitted in unit*'. All pages are initialled indicating agreement between the parties. The Landlord states, despite this, the Tenant smokes in his rental unit. The Landlord, when questioned about smoking in the unit, stated that seeing an ashtray sitting on a table inside the unit was evidence of the Tenant smoking in his suite.

The Landlord testified that they are relying on a warning letter written on November 23, 2020 as their information of a breach of a material term of the tenancy agreement. This letter states:

We are writing to you as the building operator for [name of apartment complex].

It has come to our attention that on November 21, 2020 you were allowing a guest of your unit to smoke inside your unit. We remind you that under your Residential Tenancy Agreement, THERE IS NO SMOKING IN YOUR UNIT.

Any smoking in your unit is a violation of your tenancy agreement. As this is the third warning sent to you regarding this matter. Any further violation of your tenancy agreement will result in an eviction notice being served to you.

Please honor your tenancy agreement, that you signed, and do not smoke in your unit.

The Landlord stated that the deadline to comply with this letter was 'immediately'.

The Tenant's application speaks about the Tenant's anxiety dealing with authority figures. This apartment, the Tenant's first on his own, he calls his home. His written application states he was so afraid of the repercussions of the smoke detectors going off, that he covered them with towels. The Tenant says he is experiencing shame and guilt for the incidents that occurred involving the fire department calls. His assistant pointed out that there have been three incidents in the five years the Tenant has resided in the rental unit.

The Tenant further writes that he has medical issues for which he takes methadone for pain and at times it makes him drowsy or forgetful. The Tenant feels that an eviction is a harsh punishment and made some suggestions of what he has done already or is willing to have done to rectify the situation in his home:

- He has bought a fire extinguisher
- Would be willing to disconnect his oven and instead will use a toaster oven with a timer
- Would get a digital hot plate, again one with an automatic shut off

His previous life experiences have not better prepared him for rental apartment living, but he has friends in the apartment complex that help and support him and he does not want to lose them.

The Tenant writes that *"I smoke on my balcony and always have. I feel singled out because on my side of the building I am not the only smoker 304, 104, and my unit seem to be the only ones following the rules when you see other tenants patio or balcony has unmarked snow showing that they are also ignoring the Rules for some tenants and harassing the people that follow the Rule"*. He brings his ashtray in after having a cigarette so that the wind does not cause a mess in other people's balconies or rental units.

The Tenant testified that the incidents are not intentional. He stated he did not touch the smoke detector in his bedroom, but he did cover the one in the hallway. He said he was asked to take the towel down by JC, and he did. He now knows he is not to cover the smoke detectors.

JC said they have to look after the apartment complex, and the safety of the other residents. The Landlord is seeking an Order of Possession because the Tenant is not complying with his tenancy agreement and has jeopardized other occupants' safety because of his negligence.

JF said the Tenant is not going out of his way to cause trouble in the building. Since the last incident, the Tenant has gotten a fire extinguisher, does not cook on high heat and is using an egg timer while he cooks. JF states that the Tenant would benefit from a fire safety course or a cooking course which he has heard of, but as of the hearing date, had not found any. JF said that according to this claim, everyone in the building should be kicked out. Finally, JF submitted that having an ashtray in the Tenant's rental unit

does not mean he is smoking in his suite. JF submits the One Month Notice must be cancelled.

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: cause

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

- (d) *the tenant or a person permitted on the residential property by the tenant has*

- (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) *put the landlord's property at significant risk;*

...

- (h) *the tenant*

- (i) *has failed to comply with a material term, and*
- (ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received, and*

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Tenant was served with the One Month Notice on January 7, 2022. I find that the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on January 14, 2022 within the 10 days after the date the Tenant received the One Month Notice.

The Landlord testified that over the past year, there have been three documented instances of stovetop fires. The Landlord did not provide evidence of these three instances. The Landlord's documentary evidence supports incidents occurring on February 10, 2019 and February 2, 2021 where the fire department attended at the residence. The first instance was described as a grease fire while the second instance was a pot left burning on the stovetop. The evidence does not support that there was a fire in the second instance, but rather a lot of smoke coming from the pot contents burning in the pot. After a third undated incident, the Resident Caretaker determined that the Tenant had covered a smoke detector in his rental unit which is not a good practice for this safety feature in the suite.

The Tenant's assistant said there have been three incidents in the five years the Tenant has resided in the rental unit. The Tenant takes a pain medication that makes him drowsy or forgetful. The Tenant has had limited experiences living on his own resources and faculties. He is happy in this residential complex, he said he has made friends who help and support him. The Tenant made suggestions, some of which he has done already, and others he is willing to have done to rectify the situation in his home. The assistant testified that the Tenant is no longer cooking on high heat, and he is using an egg timer as his reminder system for when he is cooking. I find that the suggestions offered by the Tenant and the assistant would be good steps going forward for the Tenant to continue to live independently.

The Landlord exaggerated the number of incidents that occurred over the last year, or they did not disclose all the information for these incidents. The Landlord has safety issue concerns with the Tenant's conduct; however, the Tenant has been strongly impressed with these safety concerns and has come up with some good suggestions that would assist him to ensure that safety issues are covered. I find that the Tenant employing his safety suggestions would go far in assisting him to continue to live safely and independently. The Landlord's concerns are warranted, but as of now on a balance of probabilities, I do not find that the interference or disturbance is significant for other occupants or the Landlord. In the same vein, I do not find that the Tenant has 'seriously' jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or, has put the landlord's property at 'significant' risk. At this point in time, I find that the Landlord has not proven cause to end this tenancy pursuant to Section 47(1)(d) of the Act.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement for breaching a material term of that agreement. The Guideline states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party 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.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. (emphasis mine)

The Landlord relies on their November 23, 2020 letter as their notification of a breach of a material term of the tenancy agreement. The letter informed the Tenant that '*it has come to our attention ... you were allowing a guest ... to smoke inside your unit.*' The Landlord does not use the words that the Tenant has breached a material term of the

tenancy agreement, but I find the Landlord putting it in bold in the letter that '***THERE IS NO SMOKING ALLOWED IN YOUR UNIT***', that this was their notice of such a breach. The Landlord's verbal testimony was that the deadline to fix the problem was 'immediately'. I find that an 'immediate' deadline is unspecific and not reasonable as a simple dictionary definition of the word means 'at once; instantly'. This does not give the Tenant any time to fix the problem. Nevertheless, the November 23, 2020 letter states that '*any further violation of your tenancy agreement will result in an eviction notice being served to you.*' This letter is quite dated and I do wonder about the importance or materiality of no smoking in this building. I find, based on a balance of probabilities that the Landlord has not proven that the Tenant smokes in his rental unit, and has breached the no smoking rule in the rental unit. I find that the Landlord has not proven cause to end this tenancy pursuant to Section 47(1)(h) of the Act. Accordingly I cancel the Landlord's One Month Notice. The tenancy shall continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 26, 2022

Residential Tenancy Branch