



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PROTECTION PROPERTY MARKETING MANAGEMENT
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The Tenant applied for dispute resolution (Application) and seeks an order canceling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the *Residential Tenancy Act* (the Act).

The Tenant and an Agent for the Landlord, JZ, attended both hearings. The parties affirmed to tell the truth during the hearings. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The first hearing took place on April 13, 2023. As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

During the hearing it became apparent that the majority of the Tenant's evidence had not been made available to me. The Tenant testified that they provided 24 pages of evidence, including 25 photographs, to the Residential Tenancy Branch on March 23, 2023. The Landlord's Agent confirmed they received evidence matching the description provided by the Tenant.

Only one of the pages of evidence described by the Tenant was made available to me. As a result, I was not able to consider evidence the Tenant wished me to. I therefore adjourned the hearing to allow the Tenant an opportunity to provide their evidence to the Residential Tenancy Branch again in advance of the reconvened hearing.

Issues to be Decided

1. Is the Tenant entitled to an order canceling the Notice?
2. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy commenced in 2015, though the precise date was not known by either party.
- Rent is currently \$685.12 per month, due on the first day of the month.
- A security deposit of \$650.00 was paid by the Tenant and it is not known if the Landlord still holds it.
- Neither party has a copy of a written tenancy agreement.
- There have been changes in management and ownership of the rental property over the years and no documents were made available to the Landlord when they assumed management a year ago.
- The Tenant still occupies the rental unit.

JZ testified as follows. The Notice was issued for three reasons which were the aggressive conduct of the Tenant, the cleanliness of the Tenant's rental unit and the issue of the Tenant smoking in the rental unit.

The Tenant was aggressive with the Landlord's staff since they took over management of the rental property. The Tenant was warned about their behaviour. A pest control company came to carry out work on the property and the Tenant was confrontational, aggressive and intimidating and was insistent that his unit was worked on first. After the confrontation the Tenant slammed the door in a member of Landlord's staff's face.

The staff from the pest control company and other tradespeople have since refused to go back to the building and had invoiced the Landlord for their time without completing the work as they will not put up with aggressive behaviour.

The Landlord raised the issue of cannabis smoke with the Tenant when they took over management of the property. The Tenant informed them he smoked cannabis as he had cancer. The parties discussed solutions such as going outside or using oils and other alternatives. The Tenant had put a towel under the door of the rental unit to stop smoke from escaping, but if a fan is run then the smoke spreads throughout the building, which is a relatively small property and has only 11 units. Other residents complained about smoke in the building. Two tenants across the hall from the Tenant also smoke cigarettes.

A tradesperson, R.H., did an inspection of the rental property at the request of the Landlord and produced a report. I was referred to the report which had been submitted into evidence by the Landlord. The report identified four suites that were found to have smoke issues. JZ said they smelled it themselves. The Landlord stated R.H., was not “a professional in cigarette smoke” but carries out general work for the Landlord including electrical work and has meters to detect levels of particulates in the air. J.Z confirmed the meters were not used in the preparation of the report. JZ referred me to a warning sent to the Tenant via email on November 20, 2022 regarding the smoking issue.

Pest control staff attended the rental property in February 2022 and said to JZ regarding the Tenant and another tenant in the building that “had to get rid of them”. The pest control staff had sprayed in the units but said the problem with the cockroaches will not go away with the units being as cluttered as they are. JZ had just recently received correspondence from the pest control staff stating this, though it was not entered into evidence. I asked JZ if they had conducted an inspection of the Tenant’s unit themselves. JZ said they had, but not recently and it was last year at some point.

The Tenant testified as follows. Other people who do not live in the rental property smoke outside which carries into the building. I was referred to a photograph which had been entered into evidence which shows a person sitting outside the building smoking. The smell of smoking is bad throughout the building. The Tenant used the towel under the door in the rental unit to stop the smell from coming in, rather than getting out. The Tenant’s guests tell him that the smell of smoke is in the halls only and not in his unit.

The Tenant was diagnosed with cancer in August 2020 and used to smoke cannabis to help him sleep, which he did on his balcony. He later started going to smoke in the alley near the rental unit only. In November 2022 the Tenant quit smoking of any kind following advice from his doctor as it was causing his blood pressure to rise.

The units around the Tenant all smoke cannabis. The Tenant had spoken with the tenant, J, who made the complaint about smoke in the building, and they had told the Tenant there was no issue with him personally. I was referred to an email from J complaining about smoke in the building. I asked the parties if they knew if there was a term in the tenancy agreement prohibiting smoking. Neither party knew if this was the case.

The Tenant referred me to photographs of their rental unit they had entered into evidence. The Tenant advised the photos were taken at the time the pest control staff came to the rental unit in February 2022. The photographs show items, which include mainly cardboard boxes and household goods, piled on the kitchen table, a sideboard which is clean and almost free from items, a lounge with papers spread across the sofa, though the Tenant stated they were filed away by the end of the day. The photographs also show a relatively clean oven, and the inside of cupboards where the Tenant had filled in holes with flex seal to stop the cockroaches from getting in. The Tenant stated when the tradesperson saw the holes had been filled, they said the Tenant had done the work for them already. After the holes were filled, the cockroaches stopped being an issue. The items on the table were there because cabinets had to be cleared so the tradesperson could carry out work in the cabinets. There were new car parts seen in some photographs which have now been sold.

The Tenant stated they have never had an issue with tradespeople, as he is one himself, and he often jokes with them when they carry out work in his rental unit. The allegations regarding slamming a door in the face of a staff member were untrue. The door of the rental unit can slam on its own sometimes, and that is what happened that day. The Tenant had asked nicely if the pest control staff could spray his unit first as he was going to work. This request was declined, and he went back inside. I was referred to a written statement from another tenant on the same floor which corroborates the Tenant's version of events.

The Tenant referred me to an invoice entered into evidence by the Landlord. The invoice stated the tenant in unit [Tenant's unit] had been aggressive to them. The

Tenant stated they did not recognize the name of the company the invoice was from, nor did they know who it could have been making the allegation.

The Tenant stated they feel the Notice was issued to them as they had complained to the Landlord about lights in the building and parkade not working, the provision of cable in the building and the cost of laundry services.

In response to the Tenant's testimony, the Landlord's Agent clarified that it was not just the Tenant who smoked. Out of the 6 units on the Tenant's floor, 3 smoked cigarettes and 2 smoked cannabis.

The Landlord is concerned about the aggressive body language and closeness of the Tenant during conversations. When tradespeople are at the property, they have to move away from the Tenant in order to have a conversation with the tradespeople. They are concerned they will have a claim against them from an employee regarding the Tenant. The Tenant is an intimidating person due to his stature and the statement from tenant J does not mention the Tenant directly because of this intimidation factor.

Analysis

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) of the Act provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

Section 47(4) of the Act states that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice. The Notice is signed February 24, 2023 and the Application was filed on March 6, 2023. I find that the Tenant filed their Application within the timeframe set out in Section 47(4) of the Act.

Section 52(d) of the Act states that a Notice to End a Tenancy must state the grounds for ending the tenancy. This sentiment is echoed on the One Month Notice to End Tenancy for Cause (RTB-33) forms which confirm that the specifics regarding the Details of Cause, such as what, where and who caused an issue, is required information.

The Notice was entered into evidence by both parties and lists three reasons, which are that the tenant or a person permitted on the residential property by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk, all of which are echoed in section 47(e) of the Act.

Three Details of Cause are listed which relate to the issues of smoking, aggressive conduct, and cleanliness of the rental unit.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that 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. With this in mind, I will consider the reasons put forward by the Landlord for ending the tenancy and determine if they have been proven to be valid, on the balance of probabilities.

Smoking

Based on the testimony of both parties, I find that smoking is not prohibited in the rental unit under the tenancy agreement. The Tenant is therefore allowed to smoke in the rental unit, though I accept that it is still possible that depending on the extent to which the Tenant smoked, there could be a negative impact on other occupants or the building itself.

Having considered the evidence and testimony before me, I am not satisfied that, on the balance of probabilities, the Tenant smokes at all, let alone to a degree that would have a negative impact on other residents or the rental property.

I find the clear and detailed testimony of the Tenant regarding the timeline of their treatment for cancer to be persuasive and accept that the Tenant stopped smoking entirely in November 2022. I give very little weight to the report entered into evidence by the Landlord which simply states [Tenant's unit] "pot smell – very strong". The author of the report was not present at the hearing to provide testimony in support of the report and it was acknowledged by the Landlord's Agent during the hearing that no meters or equipment to give any objective findings were used to prepare the report.

I also given very little weight to the complaint from tenant J. Again, they did not appear at the hearing to provide testimony, the complaint merely states their own rental unit

smells of smoke and there is no mention of any individual who they think is responsible, let alone the Tenant.

Furthermore, it was acknowledged by the Landlord's Agent that many other tenants in the property smoke cannabis and cigarettes which I find is further reason to not attribute any smoke related issues to the Tenant.

Given the above, I find that the Landlord has failed to prove this a valid reason to end the tenancy.

Cleanliness

The Landlord argued the condition of the Tenant's rental unit resulted in cockroaches being present. Though it was not mentioned during the hearing, the Notice also references the amount of belongings in the Tenant's rental unit being a fire hazard.

The Landlord submitted no evidence to indicate the condition of the Tenant's rental unit, such a photographs or reports. Only the Tenant submitted evidence in this regard by way of photographs taken at the time of the pest control visit in February 2022. Though there was a significant amount of boxes on the kitchen table, I do not consider this, in and of itself, a fire hazard or a risk in terms of attracting pests. Furthermore, the Tenant confirmed the new car parts had been sold and removed. In the absence of any evidence from the Landlord to the contrary, I accept this testimony from the Tenant.

I found that the Tenant's photographs showed the unit to be broadly clean and nothing indicated to me that there would be an issue with pests caused by the Tenant's actions, such as food being left out.

Though the Landlord's Agent had stated a pest control specialist had said the condition of the Tenant's unit would result in the cockroaches returning, no evidence confirming this was presented and the specialist was not called to provide testimony during the hearing. The Tenant's account of the exchange with the pest control specialist was very much in opposition to the Landlord's as the Tenant stated the specialist had provided positive comments to him following the work filling the holes in the wall carried out by the Tenant. The Tenant provided photographic evidence of the work they did to remediate the issue of cockroaches so I am inclined to give greater weight to the testimony of the Tenant on this issue.

The invoice submitted into evidence by the Landlord made reference to “an incredible amount of boxes and stuff” in the Tenant’s unit. I give very little weight to this evidence as the Tenant is not referenced by name, only by suite number, the document is not in the form of a statement and has not been sworn, the name of the person is not given so it is not known who made the statement and the person did not appear at the hearing to corroborate any of the allegations made on the invoice.

Given the above, I find that the Landlord has failed to prove on the balance of probabilities that the cleanliness of the Tenant’s unit is a valid reason to end the tenancy.

Conduct

The Landlord argues the Tenant is aggressive towards staff and tradespeople, resulting in the latter refusing to attend the rental property and concerns that the Landlord’s staff will make a legal claim against their employer. The Tenant denied these allegations and stated they had a good relationship with tradespeople in general.

I found there was very little in the way of evidence put forward by the Landlord regarding the overall conduct of the Tenant. The above mentioned invoice references the Tenant in [Tenant’s suite number] being “very aggressive”. As discussed above, I give very little weight to this evidence and my reasons have been outlined already.

I found the testimony of the Landlord’s Agent to be vague and lacking in specific details of precisely what aspects of the Tenant’s conduct they found to be unacceptable. References to the Tenant being “aggressive” and “intimidating” during one visit to the rental property, as well as a description of the Tenant’s physical stature was as specific as the testimony of the Landlord’s Agent got.

Though it was alleged the Tenant had been warned about their conduct, no written warnings were entered into evidence by the Landlord. I note that post-Notice correspondence from the Landlord to the Tenant simply references “prev conduct” with no further explanation.

It was alleged by the Landlord that the Tenant’s conduct had been an issue since the Landlord took over management of the rental property over a year ago. Additionally there was concern about potential claims from employees of the Landlord as a result of the Tenant’s behaviour. I found there was a lack of evidence put forward by the

Landlord to corroborate this in any way. The Tenant denied the Landlord's allegations and put forward testimony in response which I found to be credible and persuasive. Given the above, I find that the Landlord has failed to prove, on the balance of probabilities, their reasons for ending the tenancy relating to the conduct of the Tenant to be valid.

As I find the Landlord has not proven their reasons for ending the tenancy, I grant the Tenant's Application. The One Month Notice to End Tenancy for Cause dated February 24, 2023 is canceled and is of no force or effect. The Tenancy continues.

Conclusion

The Tenant's Application is granted.

The Notice is canceled and the tenancy continues.

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: May 29, 2023

Residential Tenancy Branch