



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding T&M VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC, OPB, CNC, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for breach of an agreement with the landlords, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 1, 2015 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 114 minutes. The landlord DEC ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the manager of the rental building. He confirmed that he had authority to represent the landlord company, TMVL, named in this application, as agent at this hearing (collectively "landlords"). Three witnesses, "LD," "BW," and "MV," testified on behalf of the landlords at this hearing. The landlord was provided with an opportunity to question all of the witnesses.

The landlord testified that he served the tenant with the 1 Month Notice on February 1, 2015 by posting it to the tenant's rental unit door. The landlords provided a signed and witnessed proof of service with their Application. The landlords also provided a signed statement from the tenant's father, RTD, confirming receipt of the 1 Month Notice on February 3, 2015. The tenant filed an application on February 13, 2015, to dispute this 1 Month Notice, attaching a copy with his application. In accordance with section 88 of the *Act*, I find that that the tenant was deemed served with the 1 Month Notice on February 4, 2015, three days after its posting.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Landlords' Application") on February 16, 2015, by way of posting to the tenant's rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Landlords' Application on February 19, 2015, three days after its posting.

The landlord testified that he did not serve the tenant with evidence from a "previous hearing" before the Residential Tenancy Branch ("RTB") on January 14, 2014, that he intended to rely upon at this hearing. I was the arbitrator for that previous hearing and the file numbers for that hearing appear on the front page of this decision. During the hearing, I advised the landlord that I could not consider his previous hearing evidence at this hearing, as the tenant had no notice that the landlords were intending to rely upon that evidence at this hearing.

The landlord testified that he received the tenant's application for dispute resolution hearing package ("Tenant's Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the Tenant's Application.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to an Order of Possession for breach of an agreement with the landlords?

Are the landlords and/or the tenant entitled to recover the filing fee for their application(s)?

Background and Evidence

A previous hearing was held at the RTB regarding this tenancy. Both parties made applications at the previous hearing. My "previous decision" of January 23, 2015 allowed the tenant's application to cancel the landlords' 1 Month Notice, dated October 3, 2014 ("previous 1 Month Notice"). The landlords issued the previous 1 Month Notice claiming that the tenant caused water damage, fire alarm and music disturbances. During the hearing, the landlord attempted to appeal my previous decision and reargue matters raised at the previous hearing regarding loud music complaints against the tenant. I advised the landlord that the previous 1 Month Notice was now *res judicata*, which means that these issues were already decided upon at the previous hearing and could not be reargued at this hearing. During the hearing, I advised the landlord about the above matters and noted that I would only be considering the current 1 Month Notice and new allegations against the tenant, at this hearing.

At the previous hearing, I also dismissed the landlords' application to retain the tenant's security deposit to pay for water damage to BW's rental unit. In the Landlords' Application at this

hearing and as per the landlord's testimony at this hearing, the landlord was attempting to appeal or in some way overturn my previous final and binding decision. The landlord submitted additional evidence from a police officer regarding this water damage issue. During the hearing, I advised the landlord that this water damage issue is now *res judicata* and the landlord could not attempt to reargue his previous case.

The landlord testified that this month to month tenancy began on August 1, 2013. By way of my previous decision, I ordered that the tenant's rent remain at \$740.00 per month for the remainder of this tenancy, until it is legally changed in accordance with the *Act*. The landlord confirmed that rent is currently \$740.00 per month and payable on the first day of each month. A security deposit of \$370.00 was paid by the tenant on July 4, 2013 and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was provided with the Landlords' Application.

The landlords issued the 1 Month Notice, with an effective move-out date of February 28, 2015, for the following reason:

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

The landlord testified that the 1 Month Notice is based on a single incident that occurred on January 21, 2015. The landlord indicated that he heard banging and the two witness tenants LD and BW called him to report noise coming from the tenant's rental unit. The landlord stated that he approached the tenant's rental unit from outside and heard fighting, yelling, screaming and the tenant saying "I don't like you." The landlord indicated that he knocked on the tenant's door and identified himself, after which the noise stopped and "considerable shuffling" occurred. The landlord indicated that these same noises were heard by LD who lives directly above the tenant's rental unit, BW who lives below the tenant's rental unit and another tenant, "GK," who lives on the floor above and down the hall from the tenant's rental unit. The landlord indicated that he called the police because he was concerned that someone else was in the rental unit with the tenant. The landlord stated that "Constable S" attended, confirmed that no one else was in the rental unit and further confirmed that the tenant was sweating even though he appeared not to have taken a shower, as claimed by the tenant. The landlord indicated that this entire occurrence lasted a few minutes in length. Constable S did not appear at this hearing to provide any testimony.

The landlord stated that he is now 75 years old and he has been stressed out for 6 months because of problems with the tenant. The landlord indicated that he is in good health at this time but that he is not the same jovial person as before. The landlord confirmed that he has not taken any time off work or suffered from any medical problems due to the tenant's behaviour. The landlord indicated that he has avoided seeing his family from out of town because of stress and his concern for other tenants in the building.

The landlords provided a written statement, dated January 26, 2015, from tenant GK, who stated that on January 21, 2015, he was awakened shortly before 5:45 a.m. by “someone shouting, swearing and pounding (on the walls?)” and that “after a few minutes, the noises abated.” The statement indicated that when GK was leaving for work later around 6:30 a.m., he saw the landlord standing outside the tenant’s rental unit door and the landlord confirmed to GK that the earlier noises were caused by the tenant. The landlord stated that GK was unable to provide testimony at this hearing because he was working at the time.

The landlords provided a written statement, dated January 27, 2015, from another tenant, “MV’s son,” indicating that he was awakened by loud screaming and banging on a door on January 21, 2015. MV testified at this hearing on behalf of her son, indicating that he had mental health problems and was uncomfortable with testifying. MV confirmed that her son wrote the above statement for this hearing. MV indicated that her son did not suffer any medical problems or obtain any treatment due to the tenant’s behaviour.

The landlords provided a written statement, dated January 27, 2015, from another tenant, LD. The statement discusses an incident on January 21, 2015, where LD was awakened from 5:30 to 6:00 a.m. due to loud shouting, hitting of walls and banging of doors coming from the tenant’s rental unit. The statement notes that loud altercations have been occurring repeatedly but does not discuss specific dates or time periods for these other occurrences. LD testified at this hearing and confirmed that she wrote the above statement. She stated that it was the landlord’s job to deal with the tenant and that the landlord called the police because of the above incident. She stated that the noise quieted down after half an hour. LD further indicated that she has not had any personal contact with the tenant in the last two months and that on a couple of occasions last year, the tenant approached LD’s mother to complain about LD making noise in her rental unit. LD indicated that she is fearful of the tenant and she has heard screaming and shouting on numerous occasions from the tenant’s rental unit. She maintained that she was currently looking for a new place and intending to vacate her unit if the tenant is allowed to remain living there. LD confirmed that she has not missed any time off from work, lost any wages, or sought any medical treatment because of the tenant’s behaviour.

The landlords provided a written statement, dated January 21, 2015, from another tenant, BW. The statement indicated that between 5:30 and 6:00 a.m. there was banging, yelling, swearing and threatening behaviour coming from the tenant’s rental unit. BW testified at this hearing and verified that she wrote the above statement. BW indicated that she is fearful of the tenant, particularly living alone in her unit. She stated that she has not had any personal contact with the tenant in the last two months, that she avoids the tenant but she does not leave her rental unit anymore to avoid the tenant. She indicated that while she suffered from a lack of sleep due to the tenant’s behaviour, she has not missed any time off from work or lost wages.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord and his witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings around each are set out below.

The landlords applied for an order of possession for breach of an agreement but the landlords did not provide copies of any agreements, except for the tenancy agreement. During the hearing, the landlord was unable to point to any specific provisions of the tenancy agreement that were breached by the tenant. Accordingly, the landlords' application for an order of possession for breach of an agreement is dismissed.

The landlords also applied for an order of possession for cause, based on their 1 Month Notice. Although the tenant did not appear at this hearing, he applied to dispute the landlords' 1 Month Notice within the 10 days allowed under section 47(4) of the *Act*. Therefore, the burden shifts to the landlords to show, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I do not find the above single incident on January 21, 2015 to be a significant interference or an unreasonable disturbance to the landlords or other occupants in the rental building. Although witnesses testified on behalf of the landlords regarding the above incident, indicating that they heard loud noises and were fearful, there were no direct confrontations between the tenant and these witnesses on the above date. It was a single incident spanning anywhere from a few minutes to half an hour. The landlord indicated that he called the police in order to ensure no one else was in the rental unit with the tenant and because the landlord was told not to approach the tenant directly. The landlord confirmed that as per the police, there was no one else in the rental unit with the tenant and there was a discussion about the tenant sweating. The witnesses have not sought medical attention or missed time off work due to the above incident. The witnesses have not dealt with the tenant directly in at least two months. I find that the landlords have not met their burden of proof to show that the tenant or an occupant permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlords.

Accordingly, the tenant's application to cancel the landlord's 1 Month Notice, is allowed. The landlords' 1 Month Notice, dated February 1, 2015, is cancelled and of no force or effect. I dismiss the landlords' application for an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*. This decision is **final and binding** upon both parties.

Conclusion

The tenant's application to cancel the landlords' 1 Month Notice is allowed. I dismiss the landlords' application for an order of possession for cause and for an order of possession for breach of an agreement. The landlords' 1 Month Notice, dated February 1, 2015, is cancelled

and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. This decision is **final and binding** upon both parties.

Although the tenant was successful in this proceeding, he did not attend the hearing to make any submissions to support his application. Therefore, the tenant is not entitled to recover the \$50.00 filing fee from the landlords. The tenant must bear the cost of his own filing fee.

As the landlords were unsuccessful in their application, they are not entitled to recover the filing fee of \$50.00 from the tenant. The landlord must bear the cost of his own filing fee.

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 30, 2015

Residential Tenancy Branch

