



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution filed May 3, 2016 the Tenant requested Monetary Compensation in the amount of \$10,000.00 as well as to recover the filing fee. By Amendment submitted September 23, 2016 and filed October 14, 2016, the Tenant increased her monetary claim to \$25,000.00 as well as requesting an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on September 20, 2016 (the "Notice").

In the Landlord's Application for Dispute Resolution filed on October 12, 2016 the Landlord sought an Order of Possession based on the Notice as well as recovery of the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. The hearing was extended to ensure the Tenant had a full opportunity to present her case.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Monetary Claim

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I informed the parties that, to ensure the hearing would conclude in the time allotted, I would deal only with the validity of the notice, and the question of whether the tenancy would continue. I further informed the parties that it was my intention to dismiss the Tenant's monetary claim with leave to reapply.

The Tenant replied that she did not in fact seek monetary compensation from the Landlord. She claimed she was informed by the Residential Tenancy Branch that the only way she would be able to have a hearing was to make a monetary claim. As noted above, her initial claim was for \$10,000.00 and then increased to \$25,000.00 by amendment. On two other occasions during the hearing I asked the Tenant to confirm that she wished to withdraw her \$25,000.00 monetary claim rather than simply reapply. In all instances, she insisted she wished to withdraw her monetary claim. Accordingly, the Tenant's monetary claim is noted as being withdrawn.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Should either party recover the filing fee?

Background and Evidence

The Rental Property Manager, M.B., testified on behalf of the Landlord. She stated that the tenancy began on October 1, 2011 as a 12 month fixed term tenancy and then continued on a month to month basis.

M.B. testified that the reasons for issuing the Notice were as follows. The Tenant has left repeated and ongoing voicemails which are abusive and defamatory with respect to the Landlord's management (and M.B. in particular) and which has negatively affected her ability to manage the rental property. Additionally, the Landlord alleges that the Tenant has disturbed other occupants of the rental building including striking another renters' door the culmination which resulted in the police attendance as well as yelling

at another renter over a laundry dispute. Finally, M.B. also testified that the Tenant refused entry to the rental unit of a plumber to inspect the radiator.

Introduced in evidence were three warnings letters to the Tenant as follows:

- A letter dated February 24, 2015 wherein the Tenant is informed that she has breached her tenancy agreement by yelling and screaming and banging on another tenant's door on February 23, 2015. This letter confirms that the police were called as a result.
- A letter dated August 29, 2016 wherein the Tenant is informed that she has breached her tenancy agreement by yelling at another tenant in the laundry room on August 5, 2016. In this letter the Tenant is informed that if she does not comply with the letter and her residential tenancy agreement that a 1 month Notice to End Tenancy will be issued.
- A letter dated September 1, 2016 wherein the Tenant is informed she has breached her tenancy agreement by failing to permit a technician into her suite on August 3, 2016 to inspect the radiator valves. The Tenant is reminded that she was given in notice on July 27, 2016 of the Landlord's request to access the rental unit for this purpose, and that failure to allow access will be grounds to issue a 1 Month Notice to End Tenancy.

In support the Landlord also provide a copy of the Notice of Entry dated July 27, 2016.

With respect to the allegation that the Tenant threatened another renter, D.C., M.B. testified that the Tenant went to another tenant's door accusing her of smoking. She stated that the Tenant was pounding on the door and yelling to such an extent that D.C. called the police. M.B. stated that D.C. has not been staying at the rental unit regularly as she is afraid of the Tenant.

Written submissions provided by counsel for the Landlord also allege that the Tenant has engaged in defamatory communications about the Landlord, and the Landlord's staff, principally through online communication. Examples of these communications were provided in evidence by the Landlord and which include the Tenant writing a review of the Landlord as follows:

“Absolutely the CRAZIEST people to rent from. [M.B.] is not only a total bully, she is a nasty liar. They got new owners and they all started bullying tenants to get them out to raise the rents. Do not rent off these people, they are nasty as hell.”

[Reproduced as Written]

The Landlord submitted that this conduct is in breach of clause 17 of the residential tenancy agreement which reads as follows:

CONDUCT. In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the residential property the landlord, or a neighbour.

...

The landlord may end the tenancy pursuant to the Act as one of his remedies.”

The Landlord also submitted that the Tenant has “issued increasingly threatening, abusive and false communications to the Landlord's staff.”

Introduced in evidence were transcriptions of 17 voicemails left by the Tenant to M.B., the Landlord's staff and the Landlord's legal counsel. Most of the transcriptions occupy a page and a half of typed material and in total the transcriptions occupy 32 pages of evidence.

Counsel for the Landlord stated that she listened to the voicemail messages and could confirm that the transcriptions are accurate. The messages left by the Tenant include the following:

April 25, 2016 : wherein the Tenant insults the Landlord's entire management team.

Four messages were left on April 26, 2016 between 8:18 a.m. and 11:30 a.m. The 8:18 a.m. message includes the following:

“...Um, and you [M.], you know two people who are supposed to just (unintelligible). We pay rent here and you are supposed to give us customer service so to speak. And instead we are being harassed, attacked. It's like you're little, you and him are a little Nazi group... Um, like [M.] I don't know how you have your job, I really don't know how you have your job. You're not good at it...I don't even want to live here

anymore [M.], but I don't have a choice right now. Uh I'd like a call back from [R.F.] or from you and I don't want you to avoid me [M.]. You need to get on the phone and phone me and explain to me what's going on with the mice. [phone number withheld]. And don't send somebody else here to do your dirty work. Get on the phone [M.] and make an apology to me and tell me what you're going to do to help me. Cause at this point I want money. It's just gotten ridiculous the way you've treated me and when I spend a hundred hours um, cleaning my apartment and [S.] treats me like dirt, ah, it's got to be a claim. So I don't know why you guys keep making these mistakes but you're awfully bad at what you do."

The 11:15 a.m. message includes the following:

"...And I want to know, ah, I've seen [S.] enter other people's apartments. I'm I'm very concerned that he's going to enter my apartment without my permission. The guy's a creep. He's quite clearly a violator and, um, he thought that it was a good decision to cover up my, my vents yesterday..."

The 11:30 a.m. message includes the following:

"What the hell is going on over there? The girl at the front desk is clearly embarrassed of working for your company...I mean I've phoned ah, the Landlord Tenancy people. I spoke with someone. They knew the name of [Landlord]. They knew the name of [M.]. You guys have a reputation. Now, I've talked to a couple of people who live in this building. They all have the same vibe when it comes to [S.]. There's something wrong with that guy. He's a creep. And he's making tenants feel, as though it's their fault...I'm going to call the Health Department. I'm sorry, I have to do it. And when I do fill out my claim, I'm going to charge you guys. I'm actually going to get money from you, for the abuse I took from the landlord's daughter for the smoking from what [S.] did to me there...Jesus [R.], you got to get on top of this. I haven't done anything on the internet yet, but once I do, believe me, it's very effective."

August 27, 2016: wherein the Tenant informs the Landlord they may not come into her suite to check the radiator valve. In this voicemail the Tenant also calls M.B. a "liar and a bully who does crazy things to people in [the] building".

September 1, 2016: wherein the Tenant requests that M.B. "withdraw the breach" against her, and issue another against her neighbour. In this message

the Tenant calls M.B. a “liar and a bully”, and states that she believes she has a “bad character”, a “dangerous woman” and a “sociopath”. She further alleges that she is being harassed by her neighbour, and M.B. the latter of which also alleges is terrorizing her.

September 2, 2016: wherein the Tenant says:

“You’re not allowed in my apartment M [.B.], and you’re not allowed to send anybody into my apartment.”

“I think you’re the most unhinged person I’ve seen in a while. I am suing a stalker on the internet I have a lawyer right now I’m gonna talk to him about you too. I’m gonna call the uh [name of city withheld] Police Mental Health Unit and I’m gonna talk to them about you too.”

[Page 46 and 47 of the Landlord’s evidence]: a message left wherein the Tenant references a letter dated August 29, 2016 and states that she intends to create a “review website” wherein she will post letters she has received from the Landlord, evidence in support of her position as well as offering others to “put up their experiences”.

[At page 53 and 54 of the Landlord’s evidence]: a message wherein the Tenant threatens to sue for \$25,000 and wherein she calls M.B. “mentally unstable”, a “cruel and vicious person” and wherein the Tenant says:

“Goodbye M., don’t put anything more on my door again. I really mean that I’m not just telling you. It has to be somebody else M., it can’t be you. I don’t want to see your name at the bottom of any letter ever again. You are a disturbing factor in my life and how you got in my life I don’t know. I pay rent here for you to abuse me. That’s sensational M., you should lose your job, except for I realize that all of [Landlord’s business name] stinks!”.

September 21, 2016: from the Tenant to counsel for the Landlord, L.M. wherein the Tenants says:

“L., [Tenant’s name] calling. Matter number [references file number].

Um, yes, its an eviction notice from [Landlord’s name]. I’m representing myself, so if you’d like to give me a call, my number is [withheld]. Um I have spoken with the Landlord and tenancy people, and of course they’re

laughing, at you, really, truly, because this is ridiculous now, so so, here's the deal, here's the deal L. I'm going to up it to \$25,000 now, I'm making an amendment tomorrow and ummmm, the only way that you guys are going to get me to withdraw this claim is, and I've already told [M.]. this, she quite selective with the messages that she gives you, ummm all 3 breaches have to be withdrawn and I want a full, formal, written apology from [M.]

Counsel for the Landlord submitted that the Tenant's behaviour has escalated and her voicemail messages have become more harassing and threatening.

M.B. confirmed that she does not reside in the rental building, but is the property manager, and works out of an office outside the city in which the rental unit is located.

The Landlord issued the Notice on September 20, 2016. The reasons cited on the Notice are as follows:

1. 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, or
2. the Tenant has engaged in illegal activity that has caused or is likely to
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
3. Breach of a material term that was not corrected within a reasonable time after written notice to do so;
4. Tenant knowingly gave false information to a prospective Tenant or purchaser viewing the rental unit/site or property/park;

Both parties submitted a copy of the Notice in evidence. The Notice informed the Tenant that she was required to apply for dispute resolution within 10 days of receipt of the Notice.

The evidence of the Landlord was that the Notice was served on the Tenant by registered mail. Introduced in evidence was a copy of the tracking number and tracking results confirming the package was delivered on September 21, 2016. Also introduced in evidence was a copy of a letter from Canada Post confirming delivery of the registered mail package on September 21, 2016. This document contained the Tenant's first initial and last name as well as a signature.

During the hearing the Tenant stated that she did not sign for the registered mail, that it was not her signature and that the signature was "forged".

During the hearing, it appeared to me as though the Tenant had amended her application to apply to dispute the Notice on October 14, 2016 (as that was the date it was filed) and that accordingly the Tenant had applied outside the 10 day required by section 47 of the *Act*.

I find, based on the evidence before me that the Tenant was served on September 21, 2016. I do not accept her evidence that her signature was forged.

A review of the internal audit notes confirms that on September 23, 2016 the Tenant submitted her Amendment wherein she disputed the Notice and increased her monetary claim. Clearly this was in response to the registered mail package she received on September 21, 2016.

The internal audit notes also show that counsel for the Landlord called the Branch on September 28, 2016 confirming she had received the Tenant's Amendment disputing the Notice, as well as increasing her monetary claim from \$10,000.00 to \$25,000.00.

For reasons unknown to me, the Tenant's September 23, 2016 Amendment does not appear to have been filed until October 14, 2016. I am unable to determine why this is and find that the Tenant, in submitting her application to amend on September 23, 2016, filed to dispute the Notice within the ten days required by section 47.

In response to the allegations contained in the Notice, the Tenant said she was sorry for the messages that she left on M.B.'s voicemail. She claimed that she tried to talk to M.B. and M.B. would not speak to her. The Tenant admitted to leaving the voicemail messages, but stated that she also left messages which were kind and asking for M.B.

to respond. She stated that she had personal issues which impacted her behaviour at that time. The Tenant did not specifically respond to the contents of any of the voicemail messages, but confirmed they were accurate transcriptions.

When I gave the Tenant an opportunity to respond to the allegations set out in the Notice, the Tenant began talking about the behaviour of her neighbours, and in particular their smoking. When I cautioned her that she needed to use her time wisely and respond to the Landlord's specific allegations, she again began making accusations about her neighbour and M.B. alleging that they were both lying and bullying her.

The Tenant expressed concern during the hearing that she would not have sufficient time to respond. I assured her I would make time to hear from her to ensure she had a fair opportunity to be heard.

In response to the Landlord's claim that she unreasonably disturbed another occupant of the rental building, the Tenant stated that she knocked on her neighbour's door, and did not bang on it. The Tenant confirmed that it was M.B. who had called the police, not the neighbour. She also claimed that the police did not have to be called, but submitted that M.B. called only because she is a bully. The Tenant then began a diatribe of her allegations of M.B.'s behaviour.

The Tenant then stated that she was a "dream tenant" the "nicest tenant you could want in a building". She stated that she takes good care of the rental building, keeps her rental unit nice and cleans up other people's garbage. She stated that she loved the rental unit and did not want to move.

The Tenant then repeated her allegations about her neighbour and M.B. calling them bullies and liars and that they were terrorizing her. Most of what she stated she had already stated to me and for the most part simply made the same allegations repeatedly in what is best described as a character attack on both her neighbour and M.B.

In response to the Landlord's claim that the Tenant refused to allow the plumber into the rental unit to inspect the radiator valve, the Tenant stated that she did not allow access because she did not know the name of the company. She further stated that she was also afraid that it was M.B. who was trying to come into the rental unit to spy on her.

Although the hearing was to conclude within an hour, I allowed the Tenant equal time to that of the Landlord to ensure she had time to full respond to the Landlord's submissions. Further, at the conclusion of her submissions I offered her additional time and communicated to her that I wanted to give her the full opportunity to be heard.

I asked the Tenant if she had any further submissions regarding the allegations set out in the Notice to which the Tenant stated that she regretted calling the Landlord about her neighbour's smoking. She stated that when she called M.B. "sent it into the atmosphere and [she] didn't know how to bring it back down from there".

The Tenant then again repeated her allegations about M.B. lying and bullying her and alleged that both M.B. and the Landlord's counsel lied during the hearing. The Tenant also stated that the police "were ready to go and pick up M.B." because M.B. "went off the deep end" because the Tenant called about the smoke.

In support of her application the Tenant provided typed documents setting out her position.

In one such six page document dated September 7, 2016 the Tenant alleges she has received breach letters from the Landlord which she believes are "complete lie[s]". Further she writes that she believes M.B. is evicting people simply to increase the rent. The Tenant also writes that she has invested more time than anyone dealing with a mouse infestation.

In her September 7, 2016 letter she also provides her detailed response to the August 9, 2016 letter from the Landlord alleging she harassed another occupant of the building. In her response she alleges that the problem really is D., whom she describes as follows: "NOTORIOUSLY rude, abusive, hateful, and trouble causing. To look at her is to see it all, she unmistakably a miserable energy with a sour mean look on her face, and she is never polite to anyone."

Also in the September 7, 2016 letter the Tenant provides her response to the September 1, 2016 letter from the Landlord alleging she denied access to her suite. In this portion of the letter she confirms she does not want M.B. in her rental unit as she suspects M.B. wishes to "spy on [her] apartment". The Tenant then writes she has allowed many workers into her apartment in the past to deal with rodent control. She also writes that she was worried that they would disrupt her mouse traps, poison bait and sticky traps as well as damage delicate antique furniture. The Tenant further writes that she was not provided the contact details and names of the persons who would be entering her rental unit.

In the second to last paragraph in her September 7, 2016 written submission the Tenant writes:

"I do not know [M.B.], and did not ask for her to be in my life, or for her mental health issues, or her rotten personality issues to affect me, so why are they? I pay rent and get along with everyone here except D., the nasty old woman who hates everyone, so why am I not being appreciated for how nice I am to everyone? Why am I being lied about from a life-long notoriously truly nasty and unhappy woman who thinks she can push people around because she's been here for 30 years? I'd NEVER let women like this near my life, so how did they come to being the main centre of my life, and whether or not I can walk or become crippled, essentially threatening my life on a grand scale? [M.B.] has assumed WAY too much control in my life and in other people's lives, and she needs to not only back off, but get some kind of help for her abuse issues, and be fire. I think [Landlord's name] is rotten to the core though, so she's not going to get fired."

In another written submission dated September 23, 2016 the Tenant writes:

"I have received an eviction notice from the lawyers of [Landlord's Name], and I must say, it was to be expected, given the unhinged abusive bullying and lying I have endured from them this year, 2016, in particular from one person named [M.B.], who is in cahoots with a nasty old woman who lives in my building named [D.], who is friends with the owner..."

In this same document the Tenant continues her allegations about M.B. and D. which were similar to those expressed in her voice mail messages as well as her testimony. The Tenant also writes why she likes living in the rental unit, and her claims to being a friendly, respectful tenant.

The Tenant also submitted photos of her rental unit, including photos of mouse traps, and droppings. She also submitted photos of notes she left on her neighbour's door regarding smoking, as well as photos of the no smoking signs in the building.

Analysis

After considering all of the written and oral submissions submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenant has significantly interfered with and unreasonably disturbed other occupants and the landlord of the residential property.

I accept the Landlord's evidence that the Tenant has, on more than one occasion, been verbally abusive to other occupants of the rental building. While she claims to be a "dream tenant", I find that she has engaged in a campaign against the Landlord, M.B., and her neighbour and this has clouded her ability to view her interactions with others reasonably.

Although the Landlord wished to call the neighbour as a witness, I found it unnecessary to hear from her as the incident described by the parties occurred in February of 2015.

More importantly, I find that the Tenant's single minded campaign to discredit the Landlord, and the Landlord's rental property manager, M.B., has *significantly* interfered with and *unreasonably* disturbed the Landlord, and the Landlord's staff. I further find that her behaviour has negatively affected M.B.'s ability to manage the rental property which is an unworkable situation.

The 32 pages of transcribed voicemail messages contain verbally abusive and derogatory language about the Tenant's neighbour, M.B. and other members of the Landlord's staff. The Tenant threatens to call the health department, the police and mental health authorities on M.B., and refers to S. as a "creep" and "violation".

In her voicemail messages, the Tenant threatened to seek monetary compensation from the Landlord. She then filed for dispute resolution seeking \$10,000.00. After receipt of the Notice, she increased her claim to \$25,000.00. Yet, when the hearing commenced she emphatically stated that she did not wish to receive *any money* from the Landlord, and testified that she only claimed compensation as she was told by the Residential Tenancy Branch that was the only way she would obtain a hearing date; this testimony is wholly inconsistent with her previous communications in this regard. I do not accept her testimony that the Residential Tenancy Branch staff told her she had to make a claim for \$10,000.00 to obtain a hearing date.

In some communication the Tenant tells M.B. not to have others act on her behalf, and then in later communication, confirms she will not accept written communication from M.B. While landlords and tenants are not required to be "friends", the Tenant's hostile communications are generally inappropriate, at times threatening in their content, and harassing in their frequency.

The Tenant admits she refuses to allow M.B. into her rental unit as she suspects M.B. is spying on her. The Landlord has a right to enter the rental unit provided such entry is consistent with section 29 of the *Residential Tenancy Act*. I find that the Tenant has

refused the Landlord entry even though the Landlord provided the Tenant with Notice to enter the rental unit pursuant to section 29.

The Tenant's voicemail messages to R.F. are clearly done to negatively affect M.B.'s employment and ability to conduct her duties as property manager. I find the Tenant's behaviour to be harassing, disturbing and annoying and in clear violation of clause 17 of the tenancy agreement. M.B. should be able to perform her duties without such harassment and I find the Tenant's behaviour to be unreasonably disturbing in this regard.

In consideration of the above, I find the Landlord has proven that the Notice should be upheld and that this tenancy should end.

Therefore, I dismiss the Tenant's application to cancel the Notice.

I grant the Landlord an Order of Possession, pursuant to section 55 of the *Act* effective **1:00 p.m. on November 30, 2016**. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord has been successful with their application and the Landlord is therefore entitled, pursuant to section 72, to recover the cost of filing the application. I authorize the Landlord to retain \$100.00 of the Tenant's security deposit in full satisfaction of the claim.

The Tenant suggests that the reasons for the issuance of the Notice are due to her bringing forward her concerns about smoking in her neighbours unit and her requests that the Landlord address a rodent infestation.

In the Tenants written submissions, as well as the photos introduced in evidence the Tenant alleges the Landlord has not taken adequate steps to address a mouse infestation in the rental building. Although I am ending her tenancy, I remind the Tenant that sections 32, 62(3) and 65(1) of the *Residential Tenancy Act* provide appropriate mechanisms for Tenants to address such claims through an Application for Dispute Resolution.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an Order of Possession. I grant the Landlord monetary compensation in the amount of \$100.00 for the cost of filing their application and the Landlord is entitled to deduct that amount from the Tenant's security deposit.

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 22, 2016

Residential Tenancy Branch