



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOHN HOWARD SOCIETY THOMPSON REGION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC (Tenant's Application)
 OPC, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed on August 30, 2017 he sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on August 15, 2017 (the "Notice") and an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement. In the Landlord's Application for Dispute Resolution filed on October 30, 2017, they sought an Order of Possession based on the Notice as well as recovery of the filing fee paid for their application.

The hearing was conducted by teleconference on November 20, 2017. Both parties called into 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 parties agreed that all evidence that each party provided had been exchanged.

At the outset of the hearing, the Tenant alleged he received over 100 pages of evidence from the Landlord approximately a week and a half before the hearing and requested an adjournment. He confirmed that he received and reviewed this evidence prior to the hearing. The *Residential Tenancy Branch Rules of Procedure*, allows a respondent to submit evidence up until seven days prior to the hearing such that the Landlord complied with the *Rules*. Accordingly, I denied the Tenant's request for an adjournment.

No other 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

On the Tenant's Application for Dispute Resolution he included the property manager, K.J. as the Landlord. A review of the tenancy agreement confirms that the Landlord is J.H.S.T.R. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, and *Residential Tenancy Branch Rule 4.2*, I amend the Tenant's Application to correctly note the Landlord as J.H.S.T.R.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Should the Landlord be Order to comply with the *Act*, *Regulation*, or tenancy agreement?
4. Should the Landlord recover the filing fee?

Background and Evidence

K.J. testified on behalf of the Landlord. She stated that the tenancy began approximately nine years ago. A copy of the original tenancy agreement confirms the Tenant first entered into a tenancy with the Landlord in March of 2009.

Monthly rent is payable in the amount of \$375.00. The subject rental unit has its own bathroom and kitchen and is located in a 32 room subsidized housing building. She stated that the residents occupying the rental unit are hard to house, marginalized, with significant income challenges, physical health challenges, as well as mental health issues.

K.J. confirmed there is a housing crisis in the community in which the rental unit is located. K.J. stated that the Tenant was previously housed in transitional housing approximately 11 years ago, and after two years was moved into the current building which she described as more permanent subsidized housing.

On August 15, 2017 the Landlord issued the Notice citing the following reasons:

<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has (check all boxes that apply):	
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk.
<input type="checkbox"/> Tenant has engaged in illegal activity that has, or is likely to:	
<input type="checkbox"/>	damage the landlord's property.
<input type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord.
<input type="checkbox"/> Tenant has caused extraordinary damage to the unit/site or property/park.	
<input type="checkbox"/> Tenant has not done required repairs of damage to the unit/site.	
<input checked="" type="checkbox"/> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.	

K.J. stated that the reason for issuing the Notice is that another resident in the building, G.G., with whom the Tenant has personal issues, complained that he was being harassed by the Tenant. She reported that this has been going since 2016. She further claimed that the Tenant has been talked to about this on numerous occasions, but was not previously issued a formal notice to end his tenancy as they felt that they had insufficient proof.

K.J. further stated that the most recent incidents involve the Tenant putting notes on G.G.'s door accusing him of being a rapist and sexual predator on July 5, 2017. Copies of the notes were provided in evidence.

K.J. stated she has communicated with the Tenant about his behaviour and told him not to post notes on other resident's doors. She stated that he was warned as early as September 2010 as he was, at that time, doing so with another resident. Despite these warnings, the Tenant then began posting notes to G.G.'s door in the last year.

K.J. also testified that the Tenant was issued written warnings that his tenancy was in jeopardy; letters dated March 8, 2016, September 2016 and June 23, 2017 were provided in evidence by the Landlord.

K.J. also stated that after the Landlord became aware of the issues between the Tenant and G.G. they were both informed to bring up issues with her, as the Landlord's agent, and to keep the peace. She stated that G.G. followed through with this request; however, the Tenant continued his behaviour culminating in him posting notices to G.G.'s door.

In response to the Landlord's claims the Tenant admitted to posting the notices to the door. He claimed that the notices were not "inflammatory" but accurate as G.G. had sexually assaulted another resident, T.S. He confirmed that T.S. had gone to the police about G.G. alleging she was sexually assaulted by him in early March 2017. He testified that when he found out what G.G. had done he "went nuts" and posted the notes to the door. He stated that he has mental health issues, such as anxiety, and admitted that he did not handle this well. He further stated that he realizes that he should not have posted the notices.

The Tenant also stated that G.G. assaulted R.M., another resident in the building who is elderly and has cancer. He claimed this occurred in the gazebo and was reported to the police.

In evidence was a letter from the Tenant wherein the Tenant alleges he was also personally assaulted by G.G., and that as a result, G.G. has been ordered by the police to have no contact with the Tenant. The Tenant stated that he believes the Landlord is not addressing G.G.'s behaviour in a way that guarantees safety for other residents.

The Tenant also stated that he was in a relationship with G.G. from the end of November 2016 until the end of April 2017 when their relationship ended. The Tenant admitted that he and G.G. have had issues since their relationship ended, but claimed that he does not have issues with other people in the rental property and is "quite respected by all the other tenants".

The Tenant stated that he avoids G.G. and has no communication with him whatsoever anymore and has been doing so for the past few months. He stated that in the past few months there haven't been any further issues and everyone seems to be getting along just fine. The Tenant stated that he can assure the Landlord that there will be no more notes, no more conflict of any type with respect to G.G.

In reply, J.K. stated that she was not aware that the Tenant and G.G. were in a relationship.

J.K. also stated that she spoke with the police about the numerous complaints about G.G. and was informed that the complaints could not be substantiated. She also stated that she received three complaints about G.G., one from T.S. and two from R.M. in addition to the complaints by the Tenant.

J.K. also testified that the situation has "not calmed down" as reported by D.P. When I asked her to provide details of any ongoing issues, J.K. stated that she received the Tenant's cross application. She then confirmed that there have not been any complaints about the Tenant or any incidents of conflict in the past two months.

Analysis

After consideration of the evidence and testimony before me, and on a balance of probabilities I find as follows.

Ending a tenancy is a significant requested and the Landlord bears the burden of proving the tenancy should end for the reasons cited on the Notice. In this case, the Landlord seeks an end to this tenancy on the basis that the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and,

- has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

The Landlord submitted in evidence internal communication confirming the issues between G.G. and the Tenant have been ongoing for some time. The communication indicates that the Tenant has brought concerns forward regarding G.G. and feels the Landlord has not acted appropriately in terms of dealing with his complaints.

The Tenant testified that he and G.G. had a relationship which ended poorly. He further testified that G.G. has assaulted him, as well as another elderly resident, and sexually assaulted a female resident. The Tenant stated that after the sexual assault he posted notices to G.G.'s door. The Landlord's representative confirmed that it was these notices which prompted the issuance of the Notice.

Introduced in evidence was a handwritten note from the Tenant to G.G. dated April 30, 2017 wherein he writes that he wishes to resolve matters.

In an email dated September 4, 2017 the Tenant informs the Landlord that he has been bullied, assaulted, threatened and has been the recipient of homophobic slurs from G.G. In this email the Tenant writes that G.G. was instructed by the police to keep his distance from the Tenant.

G.G. was not at the hearing to respond to any of the Tenant's allegations, however, the Landlord did provide a written statement, in which G.G. writes that the police "issued a no contact order" and he has respected that order. This suggests that G.G. was instructed by the police to have no contact with the Tenant.

Although the Tenant has been formally warned about his behaviour in the past, the warning letters provided in evidence do not all relate to the same concerns. The March 8, 2016 letter was in reference to the Tenant moving plants from a common area to his rental unit, as well warning him about alleged confrontational and aggressive behaviour towards the Landlord's staff. The September 2016 letter referenced the Tenant and other residents "partying" in a gazebo. The June 23, 2017 letter informs the Tenant that there have been complaints about him making rude comments to or about another guest of the rental building. While these letters are addressed to the Tenant, they span a period of 16 months and, aside from the final letter, address unrelated incidents.

The Tenant testified that in the past few months there has been no conflict and things have "settled down". In response the Landlord's representative stated that they have not settled down, citing the fact the Tenant filed an application to dispute the Notice. As explained during the hearing, the Tenant was required to dispute the Notice, failing which he would be conclusively presumed to accept the end of his tenancy pursuant to section 47(5). The Tenant is not to be penalized for advancing his legal interests, nor is the act of filing an application to

dispute a notice evidence that the Tenant is conflictual. I accept the Tenant's evidence that there has not been conflict for several months and that the situation has improved.

In all the circumstances, I find the Landlord has failed to prove the tenancy should end. Accordingly, I grant the Tenant's request to cancel the Notice and I dismiss the Landlord's request for an Order of Possession.

The issues giving rise to the Notice relate to issues between the Tenant and G.G. I accept the Tenant's testimony that he regrets posting the notices to G.G.'s door and realizes this was inappropriate. I further accept his testimony that he is committed to avoiding G.G. and minimizing any potential for conflict. Should the Tenant engage in any further behaviour which may incite conflict with G.G., or otherwise disturb G.G., the Landlord is at liberty to issue a further notice to end tenancy.

I find the Tenant has failed to prove the Landlord should be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement.

The evidence indicates the Landlord has addressed the Tenant's concerns regarding G.G. and has taken appropriate steps to ensure the Tenant's right to quiet enjoyment of the rental unit is not impacted. The Landlord's representative has met with the Tenant and others at the rental unit regarding the allegations about G.G. Internal communication confirms that the Landlord's staff have attempted to address the personal issues between the Tenant and G.G. fairly.

The Landlord's representative has also spoken to the police who confirmed that although allegations have been made about G.G., they are at this time unsubstantiated. Further, I accept the Landlord's evidence that they have spoken to G.G. regarding his behaviour and involvement in conflict with the Tenant, and that these discussions have minimized G.G.'s contact with the Tenant.

One can only hope that these two individuals can continue to avoid contact with one another now that they are both aware that their tenancies are in jeopardy.

Having been unsuccessful, the Landlord's request to recover the filing fee is dismissed.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request for an Order that the Landlord comply with the *Act*, *Regulations*, and/or tenancy agreement is dismissed.

The Landlord's request for an Order of Possession and recovery of the filing fee is dismissed.

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 29, 2017

Residential Tenancy Branch