



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAHAR INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 13, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated February 28, 2018. The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing. M.F., agent for the Landlord, appeared at the hearing. M.F. also had a witness appear. The witness was present at the outset of the hearing but was asked to exit the hearing until required. The witness did exit and called back into the hearing when required. The witness exited the hearing once done testifying.

I explained the process to the parties at the outset of the hearing. Neither party had any questions about the proceedings when asked.

I addressed service of the hearing package and evidence. M.F. stated he received the hearing package and Tenant’s evidence in March. Given the testimony of the Tenant and M.F., it was unclear to me whether the Tenant had received copies of all the Landlord’s evidence prior to the hearing. I admitted the Landlord’s evidence as it was either evidence the Tenant specifically acknowledged receiving or evidence the Tenant would have been aware of regardless of service.

I do note that both the Tenant and the Landlord submitted copies of a One Month Notice to End Tenancy for Cause but one is dated “28 02 2018” and one is dated “28 Feb 18” in the service section (the “Notices”). The Notices are identical other than the format of the date in the service section. M.F. explained that there are two versions of the One Month Notice to End Tenancy for Cause, both dated February 28, 2018, because he posted two versions on the Tenant’s door. The Tenant said he received the version dated “28 02 2018” but could not confirm that he received the version dated “28 Feb 18”. I admitted both Notices into evidence as doing so could not be prejudicial to the Tenant given that they are identical but for the format of the date in the service section.

Issue to be Decided

1. Should the Notices be cancelled?

Background and Evidence

The Tenant submitted the One Month Notice to End Tenancy for Cause dated “28 02 2018” as evidence. The Tenant also provided affirmed testimony.

The Landlord submitted the One Month Notice to End Tenancy for Cause dated “28 Feb 18” as evidence. The Landlord also submitted three letters from the witness, photocopies of a cheque and rent receipt, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and a rent ledger for April. M.F. provided affirmed testimony. He also called the witness at the hearing.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I allowed both M.F. and the Tenant to ask questions of the witness. I also asked some clarifying questions of the witness.

I have considered all documentary evidence submitted and all oral testimony provided by the Tenant, M.F. and the witness. I will only refer to the evidence I find relevant in this decision.

A written tenancy agreement was not provided and therefore I asked the parties about the tenancy agreement. Both parties testified to, and agreed on, the following. There is no written tenancy agreement but there is an oral tenancy agreement. The tenancy agreement was originally between Sahar Investments Ltd. as the Landlord and the Tenant and his girlfriend as the tenants. The Tenant's girlfriend has since moved out of the rental unit. The Tenant moved into the rental unit July 1, 2015. The tenancy agreement is for a month-to-month tenancy. The rent was originally \$650.00 monthly but has since increased to \$674.00 monthly. The rent is due on the first day of each month. The oral tenancy agreement does not include terms beyond the statutory standard terms as provided in the *Residential Tenancy Act* (the "Act").

As stated above, M.F. testified that he posted the Notices on the Tenant's door on February 28, 2018. M.F. said he then sent the Tenant a text message advising him that the Notices were posted on his door. M.F. testified that he then waited in the stairwell and observed the Tenant open his door and take the Notices. He said this all occurred on February 28, 2018.

As mentioned above, the Tenant confirmed that he received the One Month Notice to End Tenancy for Cause dated "28 02 2018" but could not confirm that he received the One Month Notice to End Tenancy for Cause dated "28 Feb 18". He said he received the One Month Notice to End Tenancy for Cause dated "28 02 2018" with a couple of papers attached. He agreed that this was posted on his door. He said he recalled M.F. texting him saying M.F. was going to post a notice on his door. He said someone came over to his place and told him there were documents posted on his door. He testified that he could not recall what date this was and was not sure what date he received the One Month Notice to End Tenancy for Cause dated "28 02 2018".

The Tenant testified that he filed the Application and paid the filing fee on March 13, 2018.

I note the following from a review of both Notices. The Notices are addressed to the Tenant and reference the rental unit. The Notices indicate an effective date of March 31, 2018. The Notices are signed by M.F. and dated February 28, 2018. There are several typos in the Notices which I will not detail here given my decision to cancel the Notices. The Notices list the following grounds as the reasons for ending the tenancy:

1. Tenant is repeatedly late paying rent.
2. Tenant has allowed an unreasonable number of occupants in the unit/site.
3. Tenant or a person permitted on the property by the tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. put the landlord's property at significant risk.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - a. adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

During the hearing, I dealt with each of the four grounds listed above one at a time. I heard from M.F. first and then the Tenant on each ground. I found that there was overlap in the oral evidence provided by M.F. on each ground. Further, some of the oral evidence provided by M.F. in relation to one ground was clearly not relevant to that ground but was possibly relevant to another ground. I have outlined M.F.'s evidence below under the ground that he provided the oral evidence in relation to.

1. Tenant is repeatedly late paying rent

M.F. testified that the Tenant is repeatedly late paying rent. He said that half of the Tenant's rent is paid by the Ministry and half is paid by the Tenant in cash. He testified that he has to chase the Tenant for his half of the rent. He said the Tenant was late paying April rent and referred to the 10 Day Notice.

I had to ask M.F. to provide details regarding his assertion that the Tenant is repeatedly late paying rent. He replied that the Tenant has paid rent late over twelve times since his girlfriend moved out and then said that the Tenant has paid rent late every month over the last year.

In response, the Tenant testified that he is not repeatedly late paying rent. He said he is not late paying rent every month. He admitted that he has paid rent late a few times. The Tenant said it had never been a problem until he was served with the One Month Notice to End Tenancy for Cause. The Tenant testified that he had paid rent late five times over the last year. He said the reason for the last late rent payment was that it was a long weekend and he could not access his money. He also mentioned that sometimes cheques did not get sent to him although I am unclear on this aspect of his testimony. The Tenant said that sometimes meeting M.F. to pay rent is a problem. He said he pays rent in cash to M.F. personally. He said he tries to meet M.F. to pay rent on time but sometimes cannot do so. He said he cannot leave the rent in the mailbox for M.F. because it is cash. He said that four of the five times he was late paying rent over the last year were due to issues with meeting M.F. to pay the rent.

I note that the Tenant admitted that he did not have, or believe he had, a right to withhold rent.

M.F. provided further oral evidence in response to the oral evidence of the Tenant. M.F. said that he is at the building and available on the first of every month. M.F. disagreed with the assertion of the Tenant that M.F. is sometimes not available. He said the reason for the late payments is that the Tenant has not had the rent on time.

The Tenant was given an opportunity to respond and stated that M.F. is not available all day on the first of every month to collect rent. The Tenant noted that he was not saying that M.F. is not available at all on the first of every month.

2. Tenant has allowed an unreasonable number of occupants in the unit/site

M.F. testified that the Tenant has had various “sketchy” people in his suite since his girlfriend moved out. He said these people live on the street, they do drugs and some are prostitutes. M.F. testified that these people stay over night at the suite. He said that people have moved into the suite which is not allowed without permission. M.F. mentioned an incident where an elderly lady was accosted in the laundry room by the Tenant’s guest. He also said the Tenant had a guest with a dog and that dogs are not allowed. He said that one of the Tenant’s visitors was seen with suitcases. He said one of the Tenant’s visitors was seen doing laundry in the building and that she told someone she had moved into the building. He testified about an incident where two females were observed leaving the Tenant’s suite with backpacks. He said the females ended up in the lobby with their stuff spread everywhere. I understood his testimony to be that these females were rude and that he ended up calling the police.

The Tenant said that he has had a couple people at the suite but they were just visiting. The Tenant stated that these people stayed for a day or two. He said people stay for a day or two every couple of weeks. He testified that these people did not stay overnight for lengthy periods of time. The Tenant denied that anybody had moved into the suite. He said that the female visitor who used the laundry in the building was doing so because the laundry in her building was broken.

- 3. Tenant or a person permitted on the property by the tenant has (a) significantly interfered with or unreasonably disturbed another occupant or the landlord (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord (c) put the landlord's property at significant risk.**

M.F. provided several examples of incidents he found concerning. He referred again to the incident where an elderly lady had been accosted by a guest of the Tenant in the laundry room. He said the elderly lady had moved out of the building because of this incident. He testified about an incident where people were going in and out of the fire escape and were then observed going into the Tenant's suite. He said people have complained about things happening to their cars in the garage. He made reference to drug paraphernalia and baggies. He said other tenants have expressed that they are not comfortable. He testified that the Tenant is putting the property at risk.

M.F. testified that he has received complaints from other tenants about the Tenant's visitors and about noise from the Tenant's suite late at night. He said he has witnessed this noise. He said he stood by the Tenant's door after 11:00 p.m. and heard vacuuming and someone with high heels on. M.F. referred to the three letters written by the witness and submitted as evidence. He said the witness lives below the Tenant. The letters include complaints about noise from the Tenant's suite. M.F. said he has mentioned the noise issue to the Tenant. He said the Tenant is putting other tenants' quiet enjoyment at risk.

I asked M.F. if he had ever documented these issues in writing and he said no but that he had talked to the Tenant about them. I asked M.F. if he had any evidence of tenants complaining other than the three letters written by the witness. He said the complaints had been verbal and that the other tenants were reluctant to provide written complaints as they were afraid of retaliation. He later said that he had received complaints by text

message. I asked him why he had not submitted these text messages as evidence and he said he did not think he needed to. I asked M.F. if he had any evidence of complaints made to the police about the issues he had raised. M.F. said that he was the only one who had made complaints to the police. He said he had done so on two occasions regarding visitors in and around the building.

In response, the Tenant said he did not know who was using the fire escape. In relation to the reported issues with cars in the garage, he said there were break and enters long before his girlfriend moved out which is when M.F. says this all began. He said it is not his friends breaking in. He said him and his visitors are not using drugs. He testified that he has not been overly noisy. In relation to the allegations about vacuuming, he said he vacuumed once after 11:00 p.m. because something needed to be cleaned up.

4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

M.F. mentioned the incident where an elderly lady had been accosted by a guest of the Tenant in the laundry room for a third time. He said the elderly lady had been verbally abused. I asked M.F. for further details about this incident. He said the guest yelled and screamed at the elderly lady and that the elderly lady was scared. He testified that he was told about this incident by the elderly lady. He said he did not know what the guest said to the elderly lady.

Under this ground M.F. brought up that the witness can hear noise from the Tenant's suite and that the witness needs sleep. He said you cannot hear people walking around in the building unless they are stomping. He said other tenants have complained as well.

I asked M.F. what the illegal activity he was alleging was. He said he had been told by other tenants that they had observed the Tenant doing drug deals. He said he has found baggies by the Tenant's door and car and described these as drug paraphernalia. He said he has talked to the Tenant about this several times. He also mentioned the Tenant having prostitutes over to his suite.

In response, the Tenant indicated that he did not agree with the allegations of M.F. He said he does not do drugs. He said that M.F. has not approached him about the complaints except in the last month. He said that he was hearing about the incident in the laundry room with the elderly lady for the first time at the hearing.

Witness

I heard from the witness last. The witness testified that she moved into the building January 3, 2018. She said she had rented from M.F. previously for 17 years. She said she lives in the suite below the Tenant. She said there is constant noise coming from the Tenant's suite after 11:00 p.m. She said the noise has occurred since she moved in. She said the noise includes vacuuming and people wearing heavy boots or shoes and high heels. At first the witness said the noise occurs two to three times a week. She then said the vacuuming occurs twice a week and the noise of high heels occurs nightly. She also added that the people upstairs move furniture across the floor nightly and that this started when she moved in. She said she complained about the noise to M.F. in the third week of February.

The witness also said that she thinks two people are living in the suite upstairs. She said she did not know who lived in the suite because she had never met them.

The Tenant asked one question of the witness. He asked the witness why she had not come up to his suite and said something to him about the noise. The witness replied that she was a new tenant, she did not know anybody and she was not going to confront him.

Before concluding the hearing, I asked both parties if they had anything further to say. The Tenant did not. M.F. said that the Tenant had admitted to receiving the One Month Notice to End Tenancy for Cause on February 28, 2018 and pointed out that the Tenant did not file the Application until March 13, 2018. I asked the Tenant for clarification on his position about when he received the One Month Notice to End Tenancy for Cause as it was not my understanding that he admitted to receiving it on February 28, 2018. The Tenant said he was not one hundred percent sure when he received the One Month Notice to End Tenancy for Cause. He also said something to the effect that he was going with what M.F. said.

I have reviewed the three letters written by the witness and submitted as evidence by M.F. These letters were written on April 5, 7 and 8, 2018, after the Notices were served on the Tenant. The letters appear to outline noise that occurred April 4, 7 and 8, 2018, again after the Notices were served on the Tenant. I do note that the letter dated April 5, 2018 may refer to noise that preceded the letters although this is not clear. The noise complained of in this letter is that of people wearing boots and high heels all day starting at 5:30 a.m.

Analysis

I accept the testimony of M.F. that he posted the Notices on the Tenant's door on February 28, 2018. The Tenant agreed that the One Month Notice to End Tenancy for Cause that he received was posted on his door. The Tenant did not dispute that this was posted on February 28, 2018. The Tenant did not acknowledge receiving both Notices but I find his testimony vague on this point as he stated he received the One

Month Notice to End Tenancy for Cause dated “28 02 2018” with a couple papers attached. Based on M.F.’s evidence, I am satisfied that the Notices were served on the Tenant in accordance with section 88(g) of the *Act*.

However, I am not satisfied that the Tenant in fact received the Notices on February 28, 2018 based on the evidence provided. M.F. testified that he observed the Tenant open his door and take the Notices on February 28, 2018. The Tenant testified that he did not know when he received the One Month Notice to End Tenancy for Cause. M.F. has not submitted any documentary evidence to support his position that the Tenant received the Notices on February 28, 2018. Given the Tenant’s testimony, and in the absence of further evidence supporting M.F.’s position, I cannot conclude that the Tenant received the Notices on February 28, 2018. In the circumstances, I deem the Notices served on the Tenant on March 3, 2018, three days after they were posted on his door, pursuant to section 90(c) of the *Act*.

Pursuant to section 47(4) of the *Act*, the Tenant had ten days after the date he received the Notices to dispute them. I accept the undisputed testimony of the Tenant that he filed the Application and paid the filing fee on March 13, 2018. Therefore, I find that the Tenant disputed the Notices ten days after receiving them which is within the time limit set out in section 47(4) of the *Act*.

Under section 47(1) of the *Act*, the Landlord can end the tenancy for cause. The relevant portions of section 47(1) state:

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

...

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

...

M.F. has the onus to prove the reasons for ending the tenancy as set out in the Notices. Based on the evidence provided, I find that M.F. has not met this onus.

1. Tenant is repeatedly late paying rent

Policy Guideline 38 deals with repeated late payment of rent and states that there must be a minimum of three late payments to justify ending a tenancy (para. 2).

I find that M.F. made general statements and accusations that the Tenant repeatedly pays rent late. M.F. provided very little information about the repeated late payments. M.F. did not provide any documentary evidence to support his oral evidence that the Tenant has paid rent late every month over the last year. M.F. did not submit rent receipts showing late payments, correspondence between him and the Tenant regarding late payments or even rent ledgers showing repeated late payments. I do note that M.F. provided the 10 Day Notice, a rent receipt and a rent ledger showing that the Tenant paid rent late in April. However, this evidence is not sufficient in my view to support that the Tenant is repeatedly late paying rent. It only shows that the Tenant was late paying rent in April. I also note that the Notices were served on the Tenant in February, so prior to the late payment of rent in April.

The Tenant denied that he has repeatedly paid rent late. He admitted to paying rent late five times over the last year. I would have found this sufficient to end the tenancy based on Policy Guideline 38 if not for the reasons for the late payments provided by the Tenant. He said that four of the five times were as a result of him not being able to meet up with M.F. to pay the rent on time. A landlord cannot rely on repeated late payment of rent to justify ending a tenancy where they are at fault for the late payments.

I acknowledge that M.F. disputed the assertion of the Tenant that the reason for the late payments was that he could not meet up with M.F. to pay on time. However, again, M.F. provided no further evidence to support his oral testimony on this point.

Given that M.F. and the Tenant have provided conflicting evidence on this point, and in the absence of further evidence supporting M.F.'s position, I find that M.F. has not met his burden to prove that the Tenant is repeatedly late paying rent through no fault of M.F.'s.

2. Tenant has allowed an unreasonable number of occupants in the unit/site

I cannot find from the evidence of M.F. that the people observed in and around the Tenant's suite are anything more than temporary visitors. The oral evidence of visitors with suitcases and backpacks is not sufficient to allow me to find that these people stayed in the suite with the Tenant for any substantial amount of time. Nor do I find the evidence of the visitor in the laundry room telling someone she moved in to the building to be sufficient to allow me to conclude that this person had in fact moved in.

I do acknowledge that the witness said she thought two people lived in the suite upstairs. However, the witness did not provide details about why she thought this.

The Tenant denied that people were staying overnight at his suite for lengthy periods of time. The Tenant denied that anybody has moved into his suite.

I do not find the evidence of M.F. and the witness combined to be sufficient to allow me to conclude that the Tenant has an unreasonable number of occupants in the suite. I find that M.F. has failed to provide sufficient evidence to meet his burden to show that the Tenant has an unreasonable number of occupants in the suite.

3. Tenant or a person permitted on the property by the tenant has (a) significantly interfered with or unreasonably disturbed another occupant or the landlord (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord (c) put the landlord's property at significant risk.

In relation to the laundry room incident, based on the evidence provided by M.F., the most I can find is that a guest of the Tenant yelled and screamed at another tenant of the building. In the absence of further evidence on this point, I am not satisfied that this one incident amounted to a significant interference with an occupant of the building or

an unreasonable disturbance of an occupant of the building. I also note that the Tenant said he was unaware of this incident until the hearing. I cannot find that this one incident is a basis to end the tenancy.

M.F. testified about people using the fire escape. The Tenant denied knowing anything about this. Assuming this occurred, and that the people were guests of the Tenant, I do not see how this amounted to an incident that “seriously jeopardized the health or safety or lawful right of another occupant or the landlord” or “put the landlord’s property at significant risk”.

M.F. mentioned complaints about things happening with tenants’ cars in the garage. The Tenant denied that he or his visitors had any involvement in the issues with the cars. I do not find M.F.’s evidence on this point to be sufficient for me to find that either the Tenant or his visitors had any involvement in the issues with the cars.

M.F. made allegations about drug use and drug paraphernalia in relation to the Tenant and his guests. The Tenant denied that he or his visitors have been using drugs. I do not find M.F.’s evidence on this point to be sufficient for me to find that either the Tenant or his visitors have been using drugs or are responsible for what M.F. says is drug paraphernalia in the building.

M.F. testified about noise coming from the Tenant’s suite. M.F. had the witness appear and testify about noise coming from the Tenant’s suite. The witness had also written letters about the noise. The noise complained of includes noise from a vacuum, furniture being moved around and people walking in shoes. The Tenant said that he is not overly noisy in his suite.

I note that the letters from the witness seem to relate to noise that has occurred after the Notices were served on the Tenant and therefore I do not find them useful in determining whether M.F. had grounds to issue the Notices. I am not satisfied based on the evidence provided that the noise complained of is anything more than the usual

noise one would expect to hear when living in an apartment building with people living above them. I note that M.F. did not provide any evidence to support his assertion that tenants, other than the witness, have complained. I also note that the witness did not complain to M.F. about the noise until the third week of February and that the Notices were issued only a week later.

Given the above, I find that M.F. has not met his burden to prove that the Tenant “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” or “put the landlord’s property at significant risk” as required under section 47(1)(d) of the *Act* (emphasis added).

4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

Policy Guideline 32 outlines the meaning of illegal activity in section 47(1)(e) of the *Act*. The Policy Guidelines states the following:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

I find that the only activities alleged by M.F. that could possibly qualify as illegal activities are the following: drug use by the Tenant and/or his visitors; drug dealing by the Tenant; and the Tenant and/or his visitors being involved in illegal activity in relation to the cars in the garage. M.F. provided no evidence to support his oral evidence regarding these allegations. The Tenant denied that he or his visitors were involved in any of these activities. Given that M.F. and the Tenant have provided conflicting evidence on this point, and in the absence of substantive evidence supporting M.F.'s position, I find that M.F. has not met his burden to prove that the Tenant or his visitors were involved in any of these activities.

I acknowledge that M.F. testified about the Tenant's visitor verbally abusing an elderly lady in the laundry room. The only details he could provide me about this were that the visitor yelled and screamed at the elderly lady. In my view, this does not rise to the level of verbal abuse or an illegal activity.

I also note that M.F. said the Tenant has prostitutes over at his suite. However, it is not illegal to simply socialize with prostitutes.

Given the above, I find that M.F. has not met his burden to prove that the Tenant or his visitors have engaged in illegal activity such that the tenancy could be ended based on this ground.

Based on all the above, I find that M.F. has not met his burden to prove the reasons for ending the tenancy as outlined in the Notices. Therefore, the Notices are cancelled.

Given that the Tenant was successful in this application, I award him the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenant to deduct this \$100.00 from one future rent payment.

Conclusion

The Tenant disputed the Notices within the ten days allowed under the *Act*. M.F. failed to prove the reasons for the Notices. Therefore, the Notices are cancelled and this tenancy will continue until ended in accordance with the *Act*.

I award the Tenant \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. I authorize the Tenant to deduct this \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

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 30, 2018

Residential Tenancy Branch