



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOWN PARK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 8, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated May 31, 2018 (the "Notice").

The Tenant appeared at the hearing with a friend to assist her. The Landlord appeared at the hearing. He advised that he is the owner of the business noted as the landlord in the style of cause and of the rental unit. Witness 1 attended the hearing at the outset. After a discussion about the role of Witness 1, I suggested he remain in the conference until required. Witness 1 was not subsequently required but remained on the line to facilitate the calling of Witness 2. Witness 2 remained outside the room until required.

I confirmed the correct rental unit address with the parties and amended the Application to reflect this. This is also reflected on the front page of this decision. I confirmed the correct name of the business landlord and amended the Application to reflect this. This is also reflected in the style of cause.

I explained the hearing process to the parties who did not have questions about the process when asked. All parties and Witness 2 provided affirmed testimony.

The Tenant had submitted a copy of the Notice as evidence. The Landlord had submitted evidence. I addressed service of the hearing package and evidence.

The Landlord testified as follows. He served the Tenant with the Notice at which time the Tenant told him she would dispute it. Four days after the deadline for disputing the Notice, the Landlord called the Residential Tenancy Branch to see if the Tenant had disputed the Notice. He was told she had. He obtained the hearing details. He asked

the Tenant to provide the hearing package and evidence. The Tenant provided him with papers that appeared to be part of her application but not the full hearing package and evidence.

I understood the Landlord to say that Witness 1 told him that the Tenant put the full package under the office door or in the mail slot the Friday before the hearing.

The Landlord asked that the Application be dismissed. The Landlord said he did not know if the Tenant was relying on evidence until the Friday before the hearing. He said he did not have sufficient time to prepare for the hearing.

I asked the Landlord why an adjournment would not address his concerns about sufficient time to prepare and why dismissing the Application would be appropriate in the circumstances. The Landlord said it is a matter of fairness. When asked further about why he did not have time to prepare in the circumstances, the Landlord then said he was prepared for the hearing and was fine to proceed. The Landlord did not seek an adjournment.

I heard from the Tenant on the issue of service of the hearing package and evidence. I found her testimony on this point confusing and unclear. I was not satisfied based on the testimony of the Tenant that she served the hearing package or her evidence on the Landlord in accordance with the *Act* and Rules.

However, I determined that dismissing the Application was not appropriate in the circumstances for the following reasons. The Application only includes a dispute of the Notice and no further issues. The only evidence submitted by the Tenant is a copy of the Notice which the Landlord would have been aware of given he served the Notice. The Landlord called the Branch and learned of the Application.

The Branch records show this occurred June 15, 2018. The Landlord therefore knew about the dispute and the hearing more than a month before the hearing. The Landlord should have known that it is his onus to prove the Notice pursuant to rule 6.6 of the Rules of Procedure (the "Rules"). The Landlord uploaded evidence 31 days before the hearing. The Landlord had a witness attend and prepared to provide evidence at the hearing.

When asked why he did not have time to prepare in these circumstances, the Landlord said he was prepared to proceed. The Landlord did not want to adjourn and therefore I proceeded with the hearing.

During the hearing, the Tenant advised that she had not received a copy of the Landlord's evidence. The Landlord testified that he served the evidence on the Tenant personally on June 28, 2018. The Landlord did not have a witness to support this. The Landlord was not able to provide any further evidence to support that the evidence was served on the Tenant.

Rule 3.15 of the Rules requires a respondent to serve their evidence on the applicant. Rule 3.17 of the Rules allows me to admit evidence not served in accordance with the Act or Rules if doing so "does not unreasonably prejudice one party or result in a breach of the principles of natural justice".

I heard from each party on whether the Landlord's evidence should be admitted or excluded. I excluded the Landlord's evidence given the conflicting testimony of the parties and lack of further evidence to support service. I determined that it would be prejudicial to admit the evidence when I was not satisfied of service as it was not evidence that the Tenant would have been aware of regardless of service. I do admit the tenancy agreement submitted as this is evidence the Tenant would have been aware of regardless of service.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Notice and tenancy agreement as well as all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Tenant is not successful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

I reviewed the written tenancy agreement submitted with the parties. The agreement names a different business as the landlord; however, the parties agreed the landlord is the business landlord named in the Application and that it does business as the name in the agreement. The agreement lists the Tenant as the tenant. It includes a different address than on the Application; however, the parties agreed the legal address changed and the current legal address is on the Application. The tenancy started October 1, 2013 and is a month-to-month tenancy. Rent is \$375.00 due by the first of each month.

The Notice is addressed to the Tenant and refers to the rental unit address. It is signed and dated May 31, 2018 by the Landlord. It has an effective date of June 30, 2018. The grounds for the Notice are that the Tenant “has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord”. The Notice states “Tenant sells drugs and allows her apartment to be used for selling drugs and using drugs (crack, heroin)”.

The parties agreed the Landlord served the Notice on the Tenant personally on May 31, 2018.

The Tenant confirmed she filed the Application June 8, 2018 and the Landlord did not dispute this.

The Landlord testified as follows in relation to the grounds for the Notice. He lives at the building part time. The office he uses is across from the rental unit. He has noticed a steady stream of traffic to the unit. The Tenant has an abnormal number of visitors. The visitors stay between five and 30 minutes. In his experience, this is a sign of someone selling or using drugs.

The Landlord further testified as follows. He has received complaints from neighbours about the constant stream of people. There is a lot of noise 24 hours per day. There are people under the influence of drugs and alcohol in the hall and common areas. When he is in the rental unit doing repairs, the Tenant is always with two to five other people. When he is present and visitors knocking on the door of the unit see him, they leave without going into the unit. He and other staff are constantly finding used needles and plastic baggies consistent with drug use and drug dealing.

The Landlord called Witness 2. She testified as follows. She lived next door to the Tenant for almost a year up until September of last year. Within the first weeks of living there, she noticed a funny smell and her partner told her it was crack cocaine. People would buzz them late at night. People would be coming in and out of the unit all the time. Some days 15 to 50 people would come in and out of the unit.

The Tenant was given an opportunity to question Witness 2. In response to the questions, Witness 2 testified as follows. There were times when people would buzz them to go next door to the unit. She knew the smell of cocaine was coming from the unit because her partner told her about the Tenant's history. She did not know what cocaine smelled like. Her partner had been to the Tenant's as he used to use. She said she could not explain how they knew the smell was coming from the unit and that her partner "put two and two together".

The Tenant testified that she volunteers for a harm reduction organization. She said people come to the unit to get new supplies and return used ones. She said this is the reason for the traffic in and out of the unit. I understood the Tenant to be saying that she volunteers as a needle exchange of sorts. The Tenant, through her friend, said that the office the Landlord testified about does not have a view of the rental unit.

In reply, the Landlord disputed the testimony of the Tenant that she works for a harm reduction organization and a needle exchange.

Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(e) of the *Act*. The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

It is not in dispute that the Tenant received the Notice May 31, 2018 and filed the Application June 8, 2018, within the time limit set out in section 47(4) of the *Act*.

As noted above, the Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I accept the testimony of the Landlord regarding what has been occurring in and around the building. I did not understand the Tenant to dispute his testimony in this regard.

I am not satisfied however that the Tenant is using or selling drugs. I do not find that the evidence of numerous visitors, noise, others under the influence of drugs or alcohol and visitors not entering the unit when the Landlord is present is sufficient for me to conclude that the Tenant is using or selling drugs. The Landlord testified about finding needles and plastic baggies but did not provide details about where these were found or how they were linked to the Tenant.

The testimony of Witness 2 is not sufficient to establish that the Tenant is presently using or selling drugs. She lived next to the Tenant eight months prior to the Notice being issued. She was not able to provide a sound basis for concluding that the smell of cocaine came from the unit. She mentioned her partner having been to the unit to use but provided no further details about when or how often this had occurred.

I cannot find based on the evidence submitted that the Tenant is engaged in illegal activity and therefore the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with 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: August 03, 2018

Residential Tenancy Branch