



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOUCHSTONE PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties were represented at the hearing and given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agents. The agent HK (the "landlord") primarily spoke on behalf of the corporate landlord.

As both parties were present service of documents was confirmed. The Landlord confirmed receipt of the tenant's application and evidence. The Tenant confirmed receipt of the landlord's 1 Month Notice dated June 29, 2018 and their evidence. The Tenant testified that they were served with the landlord's evidence on August 21, 2018. Based on the undisputed testimony of the parties I find that the tenant was served with the landlord's 1 Month Notice and evidence and that the landlord was served with the tenant's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Preliminary Matter

At the outset of the hearing the Tenant objected to the agent for the landlord HK participating in the hearing. The Tenant submits that the agent HK was untruthful in the previous hearings the parties attended.

Rule 6.7 of the Residential Tenancy Branch Rules of Procedure stipulates that a party may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

The Tenant was advised that this individual has the right to participate in the hearing because he is acting on behalf of the respondent. The Tenant's objection and reason for the objection was noted.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the Landlord entitled to an order of possession?

Should the Landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

While both parties frequently interrupted the other's testimony and spoke out of turn they were able to give full submissions.

The parties agreed on the following facts. This month-to-month tenancy began in October, 2013. The rental unit is one of 23 units in a multi-unit building. In September, 2015 an occupant moved into one of the units of the building (the "Occupant"). There has been ongoing conflict between the Tenant and the Occupant since that time.

On June 18, 2018 there was an altercation between the Tenant and the Occupant. The Landlord characterizes the incident as a physical assault by the tenant. The Tenant disputes the Landlord's characterization and testified that she was the victim of the Occupant's assault.

The Landlord issued the 1 Month Notice on June 29, 2018 in response to that incident. While both parties agree that this tenancy relationship is one that has been fraught with conflict in the past, this particular 1 Month Notice was issued because of the incident of June 18, 2018.

The Landlord provides on the 1 Month Notice the reasons for the tenancy to end as:

Tenant or a person permitted on the property by 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;*

Tenant or a person permitted on the property by 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 or the landlord;*

Under the portion of the 1 Month Notice for Details of Cause the Landlord said that the Tenant physically assaulted another tenant on June 18, 2018 and has been charged with a criminal offence. The Landlord provided a police file number and court file number in relation to the incident.

The Landlord submitted into evidence a copy of a video taken by the Occupant leading up to the altercation of June 18, 2018. The video is approximately 30 seconds in length. The video was taken by the Occupant on their phone. The video shows, from the Occupant's perspective, the Occupant emerging from their rental unit into the common hallway of the rental building, calling out the Tenant, exchanging hostile words with the Tenant, and the Tenant approaching the Occupant.

The Landlord testified that they understand the Tenant entered the Occupant's rental suite and engaged in a physical fight. The police were called and the Tenant was arrested. The Landlord said a few days after the incident on or about June 20, 2018, they were provided a copy of the charges and undertaking provided by the Tenant. The Landlord said that while they were not present to witness the incident they reviewed the report from the police, statements from other residents and decided that issuing the 1 Month Notice is the appropriate response.

The Tenant characterizes the incident of June 18, 2018 as well as the past relationship with the occupant differently. The Tenant said that on June 18, 2018 she was walking in the common hallway with a friend when the Occupant emerged from their rental unit and began taunting, insulting and challenging her. The Tenant said that the Occupant was recording the entire interaction with their cell phone but the recording submitted into evidence has been selectively edited. The Tenant submits that the Occupant intended for the Tenant to lose her temper and was filming the whole interaction with the intention of capturing negative footage of the Tenant.

The Tenant said that she was upset with the Occupant recording her and the stream of verbal assaults. The video shows the Tenant and her friend initially attempting to walk away from the Occupant and demanding that the taunts stop. The Tenant said that she lost her temper and approached the Occupant with the intention of making her stop recording with the phone. The Tenant testified that the Occupant grabbed her by her hair and the interaction became a

struggle. The Tenant said that when police attended on the scene they arrested and took her away from the property.

The Tenant's witness is another occupant of the building who was present during the interaction on June 18, 2018. The witness is present in the video recording. The witness testified that she and the Tenant were in the hallway of the rental building when the Occupant emerged and commenced recording the tenant with a cell phone while taunting her verbally. The witness testified that the Occupant's constant verbal challenges eventually wore down the Tenant's patience and the Tenant approached the Occupant to take the cell phone away. The witness said that she attempted to intervene between the parties but was unsuccessful. The witness said that she saw the Occupant grab the Tenant by the hair and pull her in to the rental suite. The witness said that she yelled for another resident to call the police while she attempted to physically separate the occupant and tenant. The witness testified that when the police arrived they disregarded her statements and arrested the Tenant.

The Tenant testified about ongoing conflict with the Occupant and mentioned incidents in the past which she characterizes as the Occupant attempting to kill her. The Tenant submits that the landlord has failed to act by allowing the occupant to continue to reside in the rental building. The Tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement by ending the Occupant's tenancy.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been a significant interference or unreasonable disturbance of another occupant by the tenant, a serious jeopardy to the health or safety of another occupant caused by the tenant, or that they have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or well-being of another occupant.

The parties confirm that the 1 Month Notice of June 29, 2018 was served on the tenant personally on that date and that the tenant filed an application to dispute the Notice on July 9, 2018. I find that the tenant filed their application to dispute the 1 Month Notice within the ten days provided under the *Act*.

Both parties agree that there was an altercation on June 18, 2018 between the Tenant and the other Occupant which is the reason the 1 Month Notice was issued. The landlord claims that

the incident was a physical fight which is an illegal act affecting the other occupant's security and safety, seriously jeopardizes health and safety, and unreasonably disturbs other occupants.

I find, on a balance of probabilities that the landlord has provided insufficient evidence that this tenancy should end in accordance with the 1 Month Notice. The landlord was not present at the time of the altercation. The primary evidence submitted by the landlord is a video recording made by the Occupant and a charge document from the police. Based on the evidence the landlord characterizes the tenant as the aggressor. I do not find that the evidence is sufficient to determine that this tenancy ought to be ended.

I accept that the tenant has been charged with the offence of assault under the Criminal Code. However, as the parties testified the charges have not been proven at this time and the tenant intends to dispute them. I do not find the simple fact that the tenant has been charged with an offence to be conclusive evidence that the tenant acted in contravention of the law. Charges can be laid but the fact that they have been issued is insufficient to conclude that there the tenant has engaged in the alleged illegal activities.

The video submitted into evidence shows the Occupant emerging from their suite and engaging the Tenant verbally. The video is taken from the point of view of the Occupant and the Occupant is not visible. As the tenant points out, I note that the video submitted into evidence appears to be edited or compressed as the Tenant's physical location jumps from frame to frame. The video ends as the Tenant approaches the Occupant and opens the door to the Occupant's suite. The Occupant who took the video was not called as a witness at the hearing. I find that an edited recording taken by someone who has been in an ongoing antagonistic relationship with the Tenant and who is not made available at the hearing to be of limited probative value. In any event, while the video shows the Tenant approaching the Occupant it does not record the physical altercation which occurred afterwards.

The Tenant testified that while she confronted the Occupant it was the Occupant who escalated the incident into a physical fight. The Tenant's testimony was collaborated by her witness who is seen in the video attempting to separate the Tenant and Occupant. Both the Tenant and her witness agree that the Occupant was verbally taunting and attempting to provoke the tenant. The Tenant testified that she approached the Occupant with the intention of removing the phone when she was grabbed by the hair by the Occupant.

The onus is on the landlord to show on a balance of probabilities, which is to say it is more likely than not, that there is a basis for the 1 Month Notice. I find that a video of verbal taunts which do not show the incident in question and a charge document issued by police who were not present at the incident or as witnesses to this hearing is insufficient to conclude that the issuance of the 1 Month Notice was justified. The only witnesses at the hearing who were present at the incident in question were the Tenant and her witness who each testified that it was the Occupant who grabbed the Tenant by the hair creating a physical fight. While it is possible that the incident of June 18, 2018 was one where the tenant was the aggressor, I find

that the landlord has not established that it is more probable than the version of events the tenant submits. Where the landlord has not shown that a version of events is more likely I find that they have not met the evidentiary burden of establishing on a balance of probabilities that the 1 Month Notice is valid.

I find the other documentary evidence submitted by the parties to be of limited value. The photographs of bruised limbs are not conclusive evidence of how they were formed or any indication that they were caused by another party. I find that the evidence of ongoing disputes, complaints and prior incidents to be irrelevant to the issue of the June 18, 2018 incident except to find that it appears to be equally probable that either the Tenant or the Occupant instigated the physical conflict. Again, where both versions are equally likely the landlord has not met the burden of proof on a balance of probabilities.

I find that an edited video taken by a party to a dispute showing them emerging from their suite, verbally engaging with the Tenant and retreating back into their suite without showing the ensuing confrontation to be insufficient to conclude that the Tenant acted illegally or in a manner that unreasonably disturbed other occupants. The Tenant gave testimony which was supported by her witness that it was the occupant who escalated the confrontation into a physical fight.

I find that on a balance of probabilities the landlord has not provided sufficient evidence to show that the Tenant engaged in conduct on June 18, 2018 that would give rise to the reason for issuing a Notice to End Tenancy. Consequently, I allow the Tenant's application to cancel the 1 Month Notice. The 1 Month Notice is cancelled and of no further force or effect.

The Tenant seeks an order that the landlord comply with the *Act*, regulations or tenancy agreement by evicting the Occupant "once + for all". The Tenant submits that the landlord has not acted properly by failing to end the occupant's tenancy. I do not find that the landlord has failed to act in accordance with the *Act*, regulations or tenancy agreement such that an order to comply is appropriate.

A landlord may only end a tenancy in accordance with the *Act*. While a landlord must, pursuant to section 28 of the *Act*, protect a tenant's right to quiet enjoyment, that does not necessitate that the landlord end tenancies when requested to do so by the occupants of a rental building.

The parties have submitted into evidence copies of correspondence between themselves and other residents of the rental building. While the Tenant may feel that the landlord has not taken sufficient action to police the rental building, I find that the steps undertaken by the landlord are within what is required by the *Act*, regulations and tenancy agreement. Consequently, I dismiss this portion of the Tenant's application.

Conclusion

The 1 Month Notice of June 29, 2018 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's application is dismissed without leave to reapply.

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: September 5, 2018

Residential Tenancy Branch