



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEDMEN ESTATES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he personally served the landlord the notice of dispute resolution package but does not recall on what date. Landlord R.W. (the "landlord") acknowledged receipt of the notice of dispute resolution package in person from the tenant but did not recall on what date. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Reasons to End Tenancy

During the course of the hearing, the landlord withdrew the following reasons to end tenancy stated on the One Month Notice to End Tenancy for Cause:

- Tenant or a person permitted on the property by the tenant has:
 - 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;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

Pursuant to section 68, I amended the landlord's One Month notice to End Tenancy for Cause to reflect the above listed withdrawals.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the One Month Notice is upheld or the tenant's application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began before the current landlord owned the property and is currently ongoing. Monthly rent in the amount of \$881.00 is payable on first day of every month. A security deposit of \$387.00 was paid by the tenant to the previous landlord. A written tenancy agreement was signed by the tenant and the previous landlord and a copy was submitted for this application.

The landlord testified that on June 29, 2018 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of July 31, 2018 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice on June 29, 2018.

The amended One Month Notice stated the following reasons for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.

Breach of Material Term of the Tenancy Agreement- Use of Premises

The landlord testified that the tenant breached article 15 of the tenancy agreement.

Article 15 in part, reads as follows:

USE OF PREMISES. Tenants and guests shall use the premises for private residential purposes only, and not for any illegal, unlawful or commercial or business purposes....No business or commercial use shall be advertised or listed on or at the premises....The tenant shall not assign or sublet the premises without the written consent of the landlord.

The landlord testified that the tenant breached a material term of the tenancy agreement by operating a business out of his rental apartment and advertising his business on or at the premises. The landlord submitted into evidence a copy of the tenant's business licence which states that the business location is that of the rental property in question. The licence was issued on November 28, 2017 and expires on December 31, 2018. The licence states that the business is a home-based business.

The tenant testified that he does not have customers attend at his rental apartment and that he simply receives a telephone call and goes to the customer's location to install telecommunication equipment. The tenant submitted into evidence two letters from customers which state that they have never attended at the tenant's apartment and that the tenant has always completed his work on their site. The tenant also submitted into evidence a letter dated July 16, 2018 from the previous landlord which stated that the

previous landlord was aware that the tenant ran a business out of his home but that this was never a problem and that he was a good tenant.

The landlord testified that the tenant was told to stop operating a business out of his apartment on numerous occasions, both verbally and in writing. The landlord submitted into evidence a letter from the previous landlord dated October 27, 2011 which states that operating a business from his unit contravenes article 15 of his tenancy agreement and requests the tenant to “refrain from performing any activities related to the business purposes of [tenant’s company] in any common areas.”

The landlord submitted into evidence a letter from the landlord to the tenant dated August 24, 2014 which states that the landlord is aware that the tenant is disposing of commercial waste in the building facilities and that this must cease immediately.

The landlord submitted into evidence a letter from the landlord to the tenant dated June 12, 2015 which states that the landlord has received complaints that the tenant is running a business from his apartment and that “every complaint is investigated and appropriate action taken.”

The landlord submitted into evidence a letter from the landlord to the tenant dated May 28, 2018 which states that running a business from his rental apartment is a breach of his contract.

The landlord submitted into evidence a letter from the landlord to the tenant dated June 2, 2018 which states the following:

- the tenant received notification from the previous landlord in a letter dated October 27, 2011 requesting that the tenant refrain from running a business out of his apartment. The letter went on to state that after the current landlord took over the rental property the tenant continued to use his suite to run his business and that this was a deliberate breach of his tenancy agreement.
- the tenant was advised by the landlord to cease all business activities on the rental property.
- the tenant’s possession of a business permit does not override his legal obligations to abide by the terms of the tenancy agreement.
- The tenant’s behavior of harassment and intimidation will no longer be tolerated and the landlord is starting eviction proceedings against the tenant.

The tenant testified that after receiving the June 2, 2018 letter, it was his understanding that the landlord planned on attempting to evict him for running a business out of his apartment. The tenant testified that since he was not doing the telecommunications

work at the apartment that he didn't believe that he was contravening his tenancy agreement. The tenant testified that he stores most of his large items for his business at a storage locker. The storage locker rental agreement was entered into evidence. The tenant testified that he only keeps a few smaller items from his business in his home.

The landlord testified that they have heard the tenant say that he has \$40,000.00 of business related equipment in his apartment. The tenant denies making this statement.

The landlord testified that an internet search of the tenant's business brings up an online advertisement showing a picture of the rental building and stating the tenant's rental address as the business address for his company. The landlord entered the screen shot of the internet search into evidence. The tenant testified that he did not make the advertisement and that it may have been compiled by an internet search engine.

The landlord testified that the tenant pays his rent with cheques from his company which proves that the tenant is running his business out of his apartment. The tenant testified that he is a sole proprietor and that this means that he and his business are one entity. The tenant testified that it is easier for him to just have one account with his business name rather than to try and keep a business account and a separate personal account.

Breach of Material Term of the Tenancy Agreement- Security

The landlord testified that the tenant breached article 17 of the tenancy agreement. Article 17 in part, reads as follows:

“SECURITY....No lock or security device shall be installed or changed or altered...except with the prior consent of the landlord.”

The landlord testified that the tenant breached a material term of the tenancy agreement by installing three security cameras on the exterior of a window in his apartment. The landlord entered into evidence a letter to the tenant dated June 2, 2018 which states that the tenant must remove the cameras attached to his window and that the installation of the cameras is a material breach of the tenancy agreement. The landlord testified that the tenant told her that he had cameras in his suite and would record the landlord if she entered his suite.

The tenant testified that he is a camera enthusiast and that he has had a camera in his window for the last 10 years and that his cameras do not look into other people's suites.

The tenant testified that after receiving the June 2, 2018 letter, he did not remove his cameras. The tenant testified that he does have cameras within his suite and that if the landlords entered without his permission, he would know about it.

Breach of Material Term of the Tenancy Agreement- Conduct

The landlord testified that the tenant breached article 16 of the tenancy agreement.

Article 16 in part, reads as follows:

“CONDUCT. In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the tenants and guests shall not disturb, harass, or annoy occupants of the building or neighbor”

The landlord testified that the tenant breached section 16 of the tenancy agreement by circulating a letter to other tenants in the building disagreeing with a rent increase and stating alleged maintenance issues. The landlord testified that the tenant asked other tenants to sign the letter and submit it to the landlord. The landlord testified that this action disturbed the other tenants. The landlord submitted the letter circulated by the tenant, dated June 1, 2015, into evidence.

The tenant testified that addressing concerns within the building to management and amongst the tenants is not harassment and that his actions did not bother other tenants.

The landlord testified that in a letter from the tenant to the landlords dated May 31, 2018, the tenant stated that he knows that the landlord allows “a community services/business in the apartments that does generate traffic for handicapped personal, and have informed the City thereof.” The landlord testified that complaining about another tenant to the city is harassment. The letter dated May 31, 2018 was entered into evidence.

The tenant testified that the landlord should not try to evict him for having a home-based business while allowing other tenants to run businesses. The landlord testified that the other tenants the tenant is referring to do not run businesses out of their home

Breach of Material Term of the Tenancy Agreement- Repairs

The landlord testified that the tenant breached article 12 of the tenancy agreement.

Article 12 in part, reads as follows:

“REPAIRS TENANT....The tenant shall promptly report to the landlord any damage, or unsafe condition, or fault or deficiently in services”.

The landlord testified that the tenant did not inform her that his ceiling fan required repair as was required under the tenancy agreement. The tenant testified that in the past when he requested repairs he was ignored so on this occasion, he did not contact the landlord and completed the repair himself.

Significant Interference/ Unreasonable Disturbance of Occupant or Landlord

The landlord testified that in August of 2014 the tenant harassed her in the parking lot, demanding that she turn on the air conditioning in the hallway of the rental building. The landlord testified that the tenant had previously contacted her about this issue and she had sent him a letter stating that there was no air conditioning in the building but that the tenant did not believe her.

The landlord testified that the tenant is a large man and she is small and that when he yelled at her in the parking lot about the air conditioner, she felt threatened. Landlord M.C. testified that he witnessed the exchange between the landlord and the tenant and that the tenant swore and yelled at him about the air conditioning. The landlord submitted a letter dated August 24, 2014 from the landlord to the tenant which states that the tenant's conduct towards landlord M.C. about the air conditioning was inappropriate and unacceptable.

The tenant testified that he was not aggressive and did not yell at the landlord but did ask her about either turning on air conditioning or fans in the hallway of the rental building as the hallway was uncomfortably warm.

The landlord testified that in May of 2018 the tenant asked her to program two fobs he purchased and when she told him the fobs had to be issued from the landlord and that she would not program the fobs he had purchased he became very angry. The landlord testified that the tenant told her she should program his fobs "or else". The landlord testified that she felt threatened and asked landlord M.C. to join her. Landlord M.C. testified that when he joined the landlord the tenant stated that he was friends with police officers and firemen, alluding to the fact that he could cause trouble for the landlord.

The tenant testified that he should be allowed to purchase his own fobs and have the landlord program them. The tenant testified that he did not yell at the landlords or

behave aggressively. The tenant testified that he does have friends who are police officers and firemen and that he is allowed to let people know that.

The landlord testified that in April of 2018 the tenant harassed the telephone/cable repair person thereby prolonging the service call. The landlord testified that the tenant was upset because the door to his apartment was left open for a period of time. The tenant testified that he did not harass the telephone/cable repair person.

The landlord testified that she received a noise complaint about the tenant from another tenant in May 2018. The tenant denies making noise that would elicit a complaint.

The landlord testified that the tenant left threatening notes on an elderly neighbor's vehicle for parking crooked. The landlord testified that the elderly neighbor was parked crookedly but was still within the lines of his parking stall.

The tenant testified that his elderly neighbor often parked over the white line of his parking stall making it impossible for him to park in his parking stall. The tenant testified that he did leave notes on his neighbor's car but that they were not threatening, just asking that the elderly tenant park within his own stall. No notes were submitted into evidence.

The landlord testified that the tenant defaces notices that she puts up around the building. The landlord testified that she knows it was the tenant because the handwriting on the notices is that of the tenant. The tenant testified that he did not deface any of the landlord's notices. No defaced notices were entered into evidence.

The landlord testified that the tenant incites other tenants to complain to the landlord. The tenant testified that he has talked to his fellow neighbours about tenancy issues and urged them to bring forward issues to the landlord that they are concerned about and that this is within his rights.

Significant Risk to Landlord's Property

The landlord testified that the tenant installed a light and ceiling fan on his own without hiring a licensed electrician. The landlord testified that she is concerned that the electrical work done by the tenant may have been done incorrectly and could start a fire.

The tenant testified that he is a telecommunications technician and has years of experience installing electrical systems. The tenant testified that he didn't re-wire anything, simply installed a light and ceiling fan and that this action has not put the landlord's property at significant risk.

The landlord testified that the tenant ran an extension cord from a building outlet in the parkade to his motorcycle. The landlord testified that the tenant taped the cord down but that the tape came off periodically and was a tripping hazard. The landlord testified that the tenant was sent a letter dated June 2, 2018 asking that he remove his motorcycle from the parkade and that the tenant complied with that request. The June 2, 2018 letter was entered into evidence.

The tenant testified that the extension cord was not a tripping hazard as he tapped it down, but that after receiving the letter dated June 2, 2018 from the landlord that he removed his motorcycle from the parkade as requested.

The tenant applied for an Order that the Landlord Comply with the *Act*, Regulation or tenancy agreement. When asked what the tenant was seeking, the tenant testified that he was seeking an Order that he be permitted to work from home.

Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenant on June 29, 2018, in accordance with section 88 of the *Act*.

Breach of Material Term of the Tenancy Agreement

Section 47(1)(h) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant:

- has failed to comply with a material term, and
- has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that none of the landlord's correspondence to the tenant provides the tenant with a reasonable deadline to correct the alleged material breaches of the tenancy agreement. I also find that none of the correspondence from the landlord to the tenant explicitly states that if the corrections are not made by a fixed deadline, that the landlord will end the tenancy. I find that the landlord has not met the requirements set out in Residential Tenancy Policy Guideline 8 to evict the tenant for breach of a material term.

Significant Interference/ Unreasonable Disturbance of Occupant or Landlord

Section 47(1)(d) states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

I find that the tenant communicated his concerns about the temperature in the hallway of the rental building and the programming of his fobs to the landlord(s) in an abrasive manner. I find that while the tenant's conduct was abrasive, it was not serious enough to constitute a significant interference or unreasonable disturbance to the landlord.

I find that the alleged noise complaint does not constitute a significant interference or unreasonable disturbance to the landlord or another occupant.

When the testimony of the parties is conflicting, the onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events,

the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not met the required burden of proof to prove that the tenant harassed the telephone/cable repair person.

I find that the landlord has not met the required burden of proof to prove that the tenant left threatening messages on his neighbour's car.

I find that the landlord has not met the required burden of proof to prove that the tenant defaced notices in the residential building.

I find that the landlord has not met the required burden of proof to prove that the tenant's letters to the other tenants in the building has interfered with or disturbed the occupants of the rental property.

I caution the tenant that continued instances of yelling and swearing at the landlord may constitute a significant interference or unreasonable disturbance if they are to continue in the future. I also caution the tenant about telling the landlord about his friends in the police department as when such comments are made during a confrontation, they may constitute an implied threat which may be construed as a significant interference or unreasonable disturbance if they are to continue in the future.

Significant Risk to Landlord's Property

Section 47(1)(d) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

The tenant testified that he installs telecommunications devices on a regular basis and while not a licensed electrician, is capable of safely installing a light and ceiling fan. I find that the landlords are within their rights to require a licensed electrician to do electrical work; however, I also find that the tenant's actions, in this instance, did not put the landlord's property at significant risk.

I find that the extension cord taped to the floor of the parkade was a potential tripping hazard; however, it did not pose a significant risk to the landlord's property.

Order that the Landlord Comply with the *Act*, Regulations or Tenancy Agreement

I find that the tenant did not identify a section of the *Act*, Regulations or Tenancy Agreement that he alleged the landlord breached. As such, I dismiss the tenant's application for an Order that the Landlord Comply with the *Act*, *Regulations*, or tenancy agreement, with leave to reapply.

Conclusion

I find that the One Month Notice is of no force or effect and that this tenancy will continue in accordance with the *Act*.

I dismiss the tenant's application for an Order that the Landlord Comply with the *Act*, *Regulations*, or tenancy agreement, with leave to reapply.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 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 *Residential Tenancy Act*.

Dated: September 10, 2018

Residential Tenancy Branch