



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding T JONES ENTERPRISES 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* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 15, 2018 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord DH ("landlord manager") and landlord TJ ("landlord owner"), the tenant, and the tenant's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 69 minutes.

The tenant confirmed that his lawyer had permission to speak on his behalf. However, the tenant's lawyer did not provide submissions, he only observed the proceedings. The landlord owner confirmed that he was the owner of the landlord company named in this application and that he had permission to speak on the landlord company's behalf as an agent. The landlord owner also confirmed that the landlord manager, who is the property manager for the rental unit, had permission to represent him and his company as an agent at this hearing (collectively "landlord"). The landlord manager intended to call two witnesses, "witness JS" and "witness LP," but chose not to do so later during the hearing as he claimed their evidence was based on what they were told by him, as well as other irrelevant issues that were not related to the main incident on December 12, 2018 described below. Witness JS called into the hearing but was excluded because the parties were still testifying and she was not recalled later.

The landlord manager confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on December 15, 2018, by way of a copy that was left in his mailbox. The landlord manager confirmed that the notice was served to the tenant on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on December 15, 2018.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

The tenant testified that this month-to-month tenancy began in 1993 or 1994 and a written tenancy agreement was signed between the tenant and the former owner. The landlord manager stated that he is the property manager for the rental unit and he started this position on September 1, 2018.

Both parties agreed to the following facts. Monthly rent in the current amount of \$945.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is a penthouse apartment, with entry on to the adjoining roof.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of January 31, 2019, for the following reasons:

- *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.*

The landlord manager testified that he issued the 1 Month Notice to the tenant and he wants an order of possession mainly because of one main incident that occurred with the tenant on December 12, 2018. The landlord provided an audio recording and transcript of this incident, as well as video reenactments by a female, photographs, and hand drawn diagrams showing the incident locations, and the landlord manager's written descriptions of the incident.

The landlord manager referenced another incident on October 2, 2018, where the tenant made a comment "I can see you are going to be a problem" while he was walking away, as the landlord manager warned the tenant away from being on the roof of the building. He said that he discussed this with his relief manager and made a note in his log book, which he provided. He claimed that this was an escalating pattern demonstrating the tenant's behaviour towards him.

The landlord manager stated that on December 12, 2018, the tenant verbally attacked and physically intimidated him. He claimed that he was documenting a concern regarding the tenant's personal security camera and he took a photograph of it, as it was located outside the tenant's rental unit in a common area hallway of the rental building. He stated that he wanted to pass this concern on to the landlord owner of the building to investigate. He said that the tenant came to find him when he was posting a notice to another tenant's rental unit door, the tenant's face was close to him, the tenant was standing in a threatening posture, and the landlord manager felt personally intimidated, so he made an audio recording of the incident and submitted it for this hearing. He said that he felt uncomfortable, he tried to leave, the tenant blocked his exit, and it was a concern to him. He said that he asked repeatedly if the tenant was threatening him, the tenant told him that he would pursue him at the Residential Tenancy Branch ("RTB"), he felt cornered, the tenant would not back away, and finally the landlord manager was able to leave and call the police. He clarified that the tenant never verbally threatened to physically harm him.

The landlord manager explained that the police advised him to leave the rental building, when he first called them that day. He said the police later called him that same day, after they talked to the tenant, claiming that the tenant had calmed down and the parties could pursue their issues at the RTB, as no criminal charges were laid. He noted that there was a “glaring error” in the police report, which refers to a “verbal argument” rather than the confrontation that he said actually happened where he wanted to get away from the tenant, and he did not want to talk at all.

The landlord manager maintained that he called the landlord owner after he called the police that same day, he reported what happened with the tenant, told him he wanted to go home for the rest of the day, and the landlord owner advised him to call the police. The landlord manager claimed that the tenant has interfered with his lawful right to enforce section 32 of the *Act*, the rental building has now become an “untenable and toxic environment,” he was worried for his safety, and he is scared to go on to the roof because it is near the tenant’s rental unit. He stated that he has not encountered the tenant since the incident on December 12, 2018, although he saw him coming down the stairs at one point but he did not speak to the tenant. He maintained that he still works as a property manager for the rental building but that he used to visit two to four times per week before December 12, 2018. He claimed that since December 12, he has only visited the rental building four times total, and once was to serve the 1 Month Notice in the tenant’s mailbox on December 15, 2018. He stated that he used to visit the rental building every day in September 2018 when he first took over management duties because there was a lot of work to do.

The landlord owner testified that he had a bad previous building manager at the rental building and the landlord manager was doing a good job in his other rental property, so he hired him to take over at the rental building as his property manager. He said that since he purchased the rental property, the tenant has been doing things he should not be doing, like putting things on the roof outside the rental unit, and the previous building manager never enforced any rules against the tenant. He explained that the landlord manager asked the tenant to take things off the roof because he was putting electronic equipment, pipes, construction items, and flower pots on the roof as well as running a hose to cool down the roof. He claimed that he had to replace the roof, possibly in part to the tenant’s actions on the roof. He stated that it is a liability concern for the tenant to be on the roof because it is a 30 foot fall since there are no guard rails in place. He confirmed that the landlord manager called and told him about the incident on December 12, 2018, and that he was concerned for him, he believed what he was told,

and he asked the landlord manager if he called the police. He testified that he thinks the tenant should move on to a new rental place.

The tenant testified that since October 3, 2018, the landlord manager has been harassing him and making false accusations against him. He stated that the landlord manager removed his parking stall and assigned a new stall that is dangerous because the wall adjoining the stall is falling over and requires repair. The landlord manager claimed that the tenant does not pay for parking in his rent, so he is not entitled to a parking spot, but he was always using one for free, so he was moved to another spot due to car size. The tenant said that the landlord manager blocked his rental unit door with a ladder and if he did not have a surveillance camera to show that, there could have been an injury if he opened his door. He claimed that the landlord manager accused him of returning the wrong key to him and he sent a letter after that but received no reply from him.

The tenant explained that on December 12, 2018, he noticed the landlord manager standing at his door, taking photographs and glaring at his surveillance camera. He said that he received a memo from the landlord manager indicating he was covering the tenant's camera. He explained that he went to speak to the landlord manager and carried a voice recorder with him, as he does now since the wrong key issue. He said that when he approached the landlord manager, he turned his face towards him, and the landlord manager stood about 14 to 16 inches away from him, not 4 inches as claimed by the landlord manager. He stated that he asked the landlord manager why he was taking photographs of his camera, asked if he wanted an RTB hearing to which the landlord manager responded "yes," and he called the landlord manager an "asshole" under his breath while walking away because he was upset.

The tenant claimed that the landlord manager deliberately set up a "trap" in order to voice record it while he was in the hallway alone with the tenant. The tenant said that he did not threaten to physically harm the landlord manager, only to take him to the RTB, as confirmed in the police report referencing the RTB action. The tenant maintained that the landlord manager was angry, aggressive, there was no fear in his voice, and the landlord is 60 pounds heavier and 4 to 6 inches taller than him. He explained that he did not corner the landlord manager, there was a door immediately behind the landlord manager to leave, and the landlord manager turned and walked away with a normal gait with his back to the tenant without looking over his shoulder, thereby disputing his claim that he was fearful of the tenant. He said that the landlord manager said "ok, my friend" when he left and the tenant was not yelling at him. The

tenant provided an audio recording and transcript of the incident, as well as his own written description of the events.

The tenant testified that the police approached him on December 12, 2018, after the incident occurred. He claimed he was surprised that the landlord manager called the police. He said that he asked one of the officers if the landlord manager said the tenant physically threatened him and the officer confirmed that the landlord manager did not say that. He explained that the police report states that there was no physical assault or threat, no safety concerns, the only threat was that the tenant would go to the RTB, and both parties agreed to not speak to each other. He claimed that the police informed the landlord manager of their findings that day, the landlord manager made up threats after, and the police report supports the tenant's version of events. The tenant stated that since the 1 Month Notice was issued to him, he has had a lot of stress, he was worried about being forced out of his home, he was unable to enjoy the holidays, he suffered financial loss and took time off work, and suffered sleep loss. He claimed that he wants quiet enjoyment of his property and the landlord manager is trying to evict him to get more rent money for the rental unit because his unit was being rented for under market value since he has been living there for so long. The landlord manager denied this allegation regarding rent.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on December 15, 2018 and filed his application to dispute it on December 17, 2018. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

I find that the one incident on December 12, 2018, does not show a pattern of behaviour by the tenant. I do not find that one verbal comment made by the tenant to the landlord manager on October 2, 2018, contributes to a pattern of escalating behaviour. I find that the audio recording submitted by both parties does not demonstrate that any

threats were made by the tenant, beyond going to the RTB, which the tenant is legally entitled to do. I find that it indicates that a discussion took place between the parties where both parties seemed upset with each other. I find that the landlord manager did not sound fearful or frightened, but rather sounded angry, as did the tenant. I find that both parties engaged with each other, rather than the landlord manager backing away and de-escalating the situation as he claimed.

The police report submitted by both parties indicates that no assault, violence or threats were made, there were no safety concerns, and no criminal charges were laid. The only "threat" referenced in the report was for the tenant to seek legal action at the RTB, which the tenant is legally entitled to do. The police report indicates that both parties agreed to stay away from each other.

There have been no further incidents since the 1 Month Notice was issued to the tenant. The landlord manager said that he has not had any interactions with the tenant. The landlord manager claimed that he was still fearful of being at the rental building but he continues to work in the same position. He did not quit or take a leave of absence. He did not ask the landlord owner for modified or reduced work duties. Despite the fear to his safety, the landlord manager still left a copy of the 1 Month Notice in the tenant's mailbox at the rental building on December 15, 2018, only three days after the incident on December 12, 2018. The landlord manager did not see a doctor or take medication due to anxiety, stress or any other medical condition. He did not file any further reports or incidents to the police. He did not ask for criminal charges to be laid against the tenant by the police.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated December 15, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for orders for the landlord to comply is dismissed without leave to reapply. I find that the tenant has failed to provide sufficient evidence of entry breaches by the landlord.

The landlord is entitled to complete repairs inside and outside the tenant's rental unit but must ensure that any repair personnel are adequately supervised in order to ensure that the tenant's rental unit and his belongings are secure.

The landlord is entitled to access, use and maintain the common areas of the rental building including the roof and hallway outside the tenant's rental unit, without giving notice to the tenant. The tenant is entitled to privacy and quiet enjoyment but given that he lives in a penthouse, can use his blinds and curtains to maintain that privacy when the landlord is using the roof.

I order both parties to abide by section 29 of the *Act*; the landlord is required to give proper notice prior to entry into the rental unit and the tenant is required to provide access to his rental unit, once proper notice is given by the landlord.

As the tenant was mainly successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated December 15, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from future rent payable at the rental unit to the landlord, in full satisfaction of the monetary award for the application filing fee.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement 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: January 31, 2019

Residential Tenancy Branch