



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT

Introduction

On June 28, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing and M.R. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by hand to the reception office of the Landlord on or around July 4, 2019 and M.R. confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

M.R. advised that she served her evidence by registered mail to the Tenant on August 6, 2019 and the Tenant confirmed that he received this package on August 8, 2019. She advised that she mailed pictures to the Residential Tenancy Branch as evidence for this file; however, there was no such evidence nor were there any notes on file with respect to service of this evidence. However, M.R. was permitted to provide testimony with respect to the pictures she referred to during the hearing.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this

hearing would primarily address the Notice. Furthermore, as his other claim pertained to the return of the security deposit , this was dismissed in its entirety.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on June 1, 2018 and that rent was currently \$1,380.00 per month, due on the first of each month. A \$675.00 security deposit was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

M.R. stated that the Notice was served by being posted on the Tenant's door on June 27, 2019 and the Tenant confirmed that he received it; however, he was not sure when. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the

unit/site or property/park.” The Notice indicated that the effective end date of the tenancy was July 31, 2019.

With respect to the reason on the Notice, M.R. advised that notices get posted around the property to inform tenants of varying issues. She stated that the Tenant has been captured on surveillance cameras defacing these notices. Moreover, the Tenant has written on these notices with so much force that the drywall behind has been damaged. She advised that, in addition to the damage caused, the comments written by the Tenant are vulgar, aggressive, and inappropriate. She stated that the Tenant was warned via a letter dated May 2, 2019 to refrain from defacing the notices and damaging the property. However, the Tenant continued this pattern of behaviour, so the Landlord served the Notice. As well, she stated that the police were contacted about the Tenant’s actions. She said that they attended, spoke with the Tenant, and warned him that he could potentially be charged for his actions.

With respect to other questionable behaviours of the Tenant, she advised that he has posted pictures on other tenants’ doors, covered up signs or notices around the property, and taped inappropriate notes to other tenants’ doors or the intercom. She received a complaint from another tenant who witnessed him yelling, from his balcony, across the street at a lawyer because he was dissatisfied with the legal counsel that was provided. Another tenant advised M.R. that the Tenant was observed to be lurking on his balcony with a rock, and it appeared that his intention was to throw this at someone. She also stated that when the Tenant delivered the Notice of Hearing package, he advised the receptionist to pass on a profane message to M.R. Finally, she stated that there has been blood found on the railings around the property, and that based on the Tenant’s past behaviour, she suspects that the Tenant is responsible for this. While the police were contacted about these incidents, the caretaker had cleaned up the blood as this was a health hazard.

With respect to the reason on the Notice, the Tenant acknowledged that he was responsible for writing inflammatory and inappropriate comments while also damaging the drywall when defacing the signs and notices; however, he stated that he filled the damage and fixed it.

With respect to the other allegations by M.R., the Tenant also acknowledged to writing inappropriate comments on signs or notices about the rental unit or staff, that he did affix stickers and notes to other tenants’ doors, and that he did yell at a lawyer from his balcony because he was unhappy with the level of service that was provided. He

advised that he was not about to hurl a rock off his balcony but on one occasion, he was on his balcony when he observed “suspicious youths” around the property and his intention was to throw a “mud ball” at them if he deemed that they may engage in illegal activity. With respect to the blood on the railings, he advised that he noticed the blood one day and as the “caretaker was lazy”, he took it upon himself to clean this blood up. Finally, he stated that he refrained from certain behaviours after he was warned by the police.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on June 27, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

Regarding the validity of the reason indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reason for service of the Notice. M.R. stated that the Tenant’s behaviour of defacing signs and notices around the rental property caused extraordinary damage and warranted service of the Notice. While the Tenant acknowledged that he did deface many signs and notices, that some superficial damage was caused to the drywall behind those signs and notices as a result of his behaviour, and that he did repair that damage, I do not find the Landlord’s evidence and the undisputed testimony of both parties would constitute “extraordinary damage” that would justify service of the Notice under this ground. As such, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy on this point.

Regarding his behaviour of defacing notices and signs posted by the Landlord, the Tenant was cautioned that these repeated actions alone may have jeopardized his tenancy and warranted service of the Notice for other reasons. In addition, the undisputed evidence of his actions of posting pictures and notes around the property and on other tenants’ doors containing questionable, inflammatory comments and language, his yelling at his former legal counsel from his balcony over his dissatisfaction of services provided, and his intention to throw something off his balcony at people, are

all unacceptable actions that would further warrant justification of the Notice under a different ground.

This pattern of behaviours exhibited by the Tenant, in conjunction with his combative demeanour during the conference call, leave no doubt in my mind that the other allegations against the Tenant were credible and likely, on a balance of probabilities. Any of the aforementioned Tenant's actions are behaviours that, if committed by any tenant of a rental property, would likely give rise to a Landlord serving a One Month Notice to End Tenancy for Cause. The Tenant is on formal notice that his pattern of demonstrated behaviour is unacceptable, inappropriate, and may have jeopardized his tenancy.

Regardless, as I am not satisfied that M.R. has properly substantiated the grounds for ending the tenancy under the ground that the Tenant caused "extraordinary damage to the unit/site or property/park", I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of June 27, 2019 to be cancelled and of no force or effect.

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: August 26, 2019

Residential Tenancy Branch