



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 28, 2019 (the “Tenants’ Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated June 27, 2019 (the “Notice”). The Tenants sought reimbursement for the filing fee.

The Tenants appeared at the hearing. The Property Manager appeared at the hearing for the Landlord with the On-site Manager and two witnesses. The two witnesses were outside of the room until required.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties and witnesses. 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 Notice is not cancelled, should the Landlord be issued an Order of Possession?

3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started January 01, 2011 and was for a fixed term ending December 31, 2012. The parties agreed rent is currently \$1,014.00 per month. Rent is due on or before the first day of each month.

Term 14 of the tenancy agreement states in part:

USE OF RENTAL UNIT. The tenant and his guests must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political or business purposes...

The Notice was submitted. It includes the following grounds:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

There was no issue that the Notice was provided to, and received by, the Tenants June 27, 2019.

The Property Manager testified as follows. The Tenants have violated term 14 of the tenancy agreement. The Tenants are refinishing and selling furniture from the rental unit. Photos have been submitted showing this. Further, the Tenants have been harassing another tenant and her son. Letters about this have been submitted.

The On-site Manager testified as follows. She witnessed the Tenants selling furniture to another person. The person came to the front door and the Tenants brought furniture to them.

Witness M.S. testified as follows. The Tenants are running a furniture business from their rental unit. They fix furniture and sell it. The photos submitted show the Tenants taking stuff in and out of their rental unit. She has lived in the building for two and a half years and this started almost immediately after she moved in. She has seen the Tenants bringing furniture into the rental unit and selling it daily. The Tenants have a routine. They bring furniture from their car into their rental unit between 10:00 p.m. and midnight. They refurbish the furniture. They paint and scrub. They have tools going including saws. This occurs until 3:30 a.m. The Tenants shower late at night. The Tenants make noise until around 4:30 a.m. The Tenants sleep until 11:00 a.m. and then go out in the afternoon. This occurs night after night. She gets no rest because of this.

Witness M.S. further testified as follows. The Tenants harass her. The Tenants crowd her when she leaves her rental unit. They use appalling language when they speak to her. The Tenants told her they have been there for nine years and they can do what they want. The Tenants told her to get off the property. The Tenants told her she has a "mental problem" and should live in a "mental home".

Witness J.C. testified as follows. He is M.S.'s son. His mother has made complaints about noise since she moved in. He let her deal with it. She was told she needed photo evidence of the issue. He took one photo of the Tenants. This was his first interaction with the Tenants. The Tenants wrote a letter claiming he was harassing them. The Tenants brought the police into it saying he was stalking them. The Tenants screamed at him. The Tenants are fabricating information and allegations. The police have attended and said the claims are false. One of the Tenants hit M.S. and him. One of the Tenants punched him in the face and broke his camera. He has video of this. The Tenants have admitted they have a furniture business. He filmed them selling furniture. The Tenants are up to 3:00 a.m. hammering. A guy downstairs banged on their door and "let them have it". The Tenants slam their door even though nobody is coming or going. M.S. has not been able to sleep. He has video and audio of everything.

In response to my questions, the Property Manager testified as follows. There are rental units above and below the Tenants. There is a rental unit across the hall from the Tenants. The only neighbour to the Tenants is M.S. The On-site Manager lives down the hall from the Tenants. The Tenants agreed with this testimony and testified that the On-site Manager lives two doors down from them.

The Landlord submitted letters dated May 03, 2018 and May 06, 2019 stating the Tenants are operating a furniture refinishing and selling operation contrary to term 14 of the tenancy agreement. The May 03, 2018 letter also refers to the Tenants being verbally abusive towards another tenant.

The Landlord submitted letters from M.S. about the Tenants harassing her and running a furniture business out of their rental unit.

The Landlord submitted emails and photos from J.C.

The Landlord submitted an email from M.S. in relation to the issues outlined above. It also states that other tenants in the building have had issues with the Tenants. It refers to the Landlord having videos of the Tenants' behaviour taken by J.C.

Tenant N.P. testified as follows. The Tenants "garage sale" and redecorate their rental unit. They do sell items, but the items are their own belongings. They use a website to sell their items. The Tenants do not have issues with any other tenants in the building. The Tenants sent a letter to management inviting them to attend the rental unit to see that they are not running a business out of it. Management has been in the rental unit to do maintenance. The Tenants feel scared and unsafe.

Tenant J.B. testified as follows. M.S. is aggressive and bangs on their door and walls. The allegations of M.S. and J.C. are not true. The Tenants have lived in the rental unit for nine years. M.S. moved in two years ago and has targeted them. The photos submitted are of the Tenants. The Tenants "garage sale" and sell their own belongings on a website used for this purpose. The Tenants like to redecorate and change things in their rental unit occasionally. The Tenants are not running a business.

In response to a question from the Property Manager, the Tenants denied that they had an altercation with J.C.

The Tenants provided written submissions that state in part the following. Police spoke with M.S. and J.C. around May 26, 2019 and gave them a warning to stop the harassment of the Tenants or they will face criminal charges.

Analysis

There was no issue that the Tenants received the Notice June 27, 2019. The dispute was filed June 28, 2019, within the time limit set out in section 47(4) of the *Residential Tenancy Act* (the “Act”).

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities.

The Notice was issued pursuant to sections 47(1)(d) and (h) of the *Act* which state:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

I am not satisfied based on the evidence provided that the Tenants are using the rental unit for commercial or business purposes. The Tenants denied they are doing so. They testified that they “garage sale”, redecorate and sell their own personal items on a website used for this purpose. It is the Landlord who has the onus to prove the Tenants are using the rental unit for commercial or business purposes. I do not find the evidence provided on this point compelling.

The On-site Manager testified about an incident when she saw the Tenants sell furniture to another person at the front door of the building. The On-site Manager did not explain how or why she determined this was a commercial or business transaction versus the Tenants selling their own personal belongings to another individual. I do not accept that what the On-site Manager described was a commercial or business transaction in the absence of further explanation or evidence showing this. I do not find that term 14 of the tenancy agreement prohibits the Tenants from selling their own personal belongings on an informal basis through a website used for this purpose.

I am not satisfied based on the testimony of M.S. and J.C. that the Tenants are running a furniture business out of their rental unit. It is clear there is animosity between the Tenants and M.S. and J.C. J.C. is M.S.'s son and therefore I do not find that he is an independent third party uninterested in the outcome of this matter. M.S. and J.C. testified that the Tenants are refurbishing furniture including painting, scrubbing, sawing and hammering throughout the night on a daily basis. There is no evidence from any other tenant in the building confirming this. I would expect there to be such evidence from the tenants above or below the Tenants if this activity was occurring throughout the night on a daily basis. I also question whether this is occurring given the On-site Manager did not testify about hearing or seeing such activity, other than the one incident when the Tenants sold someone furniture at the front door. No photos, videos or audio recordings were submitted that support the testimony of M.S. and J.C. despite J.C. testifying that he has photos and videos of everything.

I acknowledge that the Landlord did submit photos of the Tenants and furniture. I do not find that the photos support that the Tenants are running a business out of the rental unit. Some of the photos show one of the Tenants standing by a dresser in the hall. Another photo shows one of the Tenants taking what looks like sheets of something or flat boxes in or out of the rental unit. Another photo shows the Tenants taking a piece of furniture or two in or out of the rental unit. It is not out of the ordinary for tenants to be taking furniture in or out of a rental unit. This is common behaviour. The photos do not show that the Tenants are running a business. They do not show that the Tenants are refurbishing furniture. They do not show that the Tenants are selling furniture. Even if I accept that the photos show the Tenants are selling furniture, they do not show this is being done commercially or as a business versus selling their own belongings.

I do not find the letters from the Landlord to the Tenants stating that they are running a business from the rental unit to be evidence of this occurring as I understand these to

arise out of complaints made by M.S. or J.C. and perhaps the evidence that has been submitted to me. However, as stated, I do not find this evidence compelling.

I cannot find based on the evidence provided that the Tenants are running a business or commercial venture out of their rental unit. This ground for the Notice has not been proven.

I am not satisfied based on the evidence provided that the Tenants have harassed M.S. or J.C. The Tenants deny this. It is the Landlord who has the onus to prove this has occurred.

The testimony on this point is from M.S. and J.C. As noted above, there is clearly animosity between the Tenants and M.S. and J.C. I do not find J.C. to be an independent third-party witness uninterested in the outcome of this matter. The Landlord has not submitted evidence from independent third-party witnesses confirming the Tenants' alleged behaviour. The Landlord has not submitted video evidence or audio recordings to support the position of M.S. and J.C. despite J.S. stating that he has such evidence. The Landlord has not submitted police reports or other supporting evidence about the alleged police involvement in this matter.

I also note that there are no complaints from other tenants in the building about the Tenants' behaviour. The Tenants have lived in the building for nine years. The absence of other complaints does not show that the incidents alleged by M.S. and J.C. did not occur. However, I do note the lack of evidence showing that the Tenants have a history or pattern of behaviour that interferes with or disturbs others.

Given the conflicting position of the Tenants and M.S. and J.C., and lack of evidence to support the position of M.S. and J.C., I am not satisfied the Tenants have engaged in the behaviour alleged. This ground for the Notice has not been proven.

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenants can deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful, I award them reimbursement for the \$100.00 filing fee. The Tenants can deduct \$100.00 from one future rent payment.

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 27, 2019

Residential Tenancy Branch