



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 12, 2019 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated July 04, 2019 (the “Notice”).

The Tenants appeared at the hearing with the Advocate. The Representative appeared for the Landlord with three witnesses who exited the conference call 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 all 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?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between a previous landlord and the Tenants in relation to the rental unit. The tenancy started November 01, 2015 and is a month-to-month tenancy. The parties agreed rent is \$1,050.16 per month and due on or before the first day of each month.

The Notice was submitted as evidence. It includes the following grounds:

1. Tenant or a person permitted on the property by the tenant has...:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - c. Put the landlord's property at significant risk.

There was no issue that the Notice was posted to the door of the rental unit July 04, 2019 and that the Tenants received the Notice the same day.

The grounds for the Notice are attached to the Notice as "Schedule A" and include the following incidents:

- October 02, 2018 Tenant J.B. used inappropriate language when speaking to the Assistant Resident Manager. The Tenant later refused to speak to the Resident Manager about the incident.
- October 17, 2018 the Tenants were sent a letter about acting respectfully and appropriately.
- December 12, 2018 Tenant J.B. was in the lobby with his dog off leash. The Resident Manager told Tenant J.B. that he needed to put his dog on a leash. Tenant J.B. told the Resident Manager he would not put his dog on a leash. It appeared that the dog had urinated on a wall in the lobby.
- January 09, 2019 the Assistant Resident Manager saw Tenant J.B. standing at the rental office door. The next day, one of the letters on the door had been removed and a letter had been scratched into the door.
- March 10, 2019 the Tenants had changed the locks on the rental unit door without providing the Landlord with a copy of the keys. Tenant J.B. refused to provide keys to the Assistant Resident Manager.

- March 13, 2019 the Tenants were sent a letter about changing the locks on the rental unit.
- March 13, 2019 staff checked the locks on the rental unit and they had been changed back to the original locks.
- June 17, 2019 Tenant J.B. was told he could not have his motorized bike in the elevator as it was causing damage to the walls of the elevator. Tenant J.B. told the Resident Manager that he refused to comply with this direction.
- June 27, 2019 the Resident Manager saw Tenant J.B. exit the elevator with his motorized bike. The Resident Manager reminded Tenant J.B. of the previous direction not to take the bike in the elevator. Tenant J.B. then swore at, and used derogatory language towards, the Resident Manager. Later that day, Tenant J.B. yelled at the Property Manager for roughly five minutes when the Property Manager attempted to address Tenant J.B.'s earlier actions and comments.

The Representative outlined the above at the hearing. The Representative testified that he spoke to Tenant J.B. on June 27, 2019 and Tenant J.B. was upset and said he can take his motorized bike on the elevator because he is "disabled". The Representative testified that the Tenants have had a continuous stream of issues with staff.

Witness J.H. testified as follows. On October 02, 2018, the Assistant Resident Manager told him about Tenant J.B. using inappropriate language when speaking to him. He and the Assistant Resident Manager filled out an incident report. He later tried to talk to Tenant J.B. about this but Tenant J.B. refused to do so. On October 17, 2018, he asked that a letter be issued to Tenant J.B. about this and a letter was issued.

Witness J.H. further testified as follows. On December 12, 2018, Tenant J.B. had his dog off leash in the building. He told Tenant J.B. he cannot have his dog off leash. Tenant J.B. refused to put a leash on the dog. He noticed urine on the wall and believes Tenant J.B.'s dog did this.

Witness J.H. further testified as follows. On June 17, 2019, Tenant J.B. had his motorized bike in the elevator. He told Tenant J.B. not to transport the bike in the elevator because it was just re-done. He also told Tenant J.B. he cannot store his bike in the rental unit because the battery poses a risk. On June 27, 2019, Tenant J.B. was in the elevator with his motorized bike. He reminded Tenant J.B. of their previous discussion and Tenant J.B. swore at him and used derogatory language towards him. Later, he was with two other staff members when Tenant J.B. started swearing at the Representative.

The Tenants asked witness J.H. if he had provided written warnings about the dog. Witness J.H. testified that he had not because he hoped the Tenants would correct the behaviour with a verbal warning. He also testified that there was no point taking the issue further because the Tenants started picking up their dog when taking it in and out of the building.

Witness A.B. testified as follows. He was cleaning the lobby on October 02, 2018 when Tenant J.B. used inappropriate language when speaking to him. He was there when witness J.H. had incidents with Tenant J.B. so he can "attest" to these.

Witness D.E. provided testimony which I have not outlined here as I did not find it to assist in determining the issues before me.

The Landlord submitted an Incident Report from R.E. dated January 09, 2019 about observing Tenant J.B. at the rental office door doing something. It states that the next day, R.E. noticed the letters on the door had been changed.

The Landlord submitted an Incident Report from R.E. dated March 10, 2019 stating that the Tenants had changed the locks to the rental unit and had not provided the Landlord with a key for the new locks.

Tenant J.B. testified as follows. In relation to the October 02, 2018 incident, he asked if the Assistant Resident Manager got paid to be rude and did not use a swearword as alleged. He did not refuse to speak to the Resident Manager about this later, he wanted another tenant present to witness the discussion.

Tenant J.B. further testified as follows. In relation to his motorized bike, he was charging this in the parkade but someone put something in the electrical outlet. There was a verbal altercation about this. The bike does not damage the elevator. He is only bringing the bike up to the rental unit because the Tenants were stripped of their parking stall.

Tenant J.B. denied that he swore at, or used derogatory language towards, the Resident Manager on June 27, 2019.

Tenant K.A. testified as follows. The Resident Manager has changed his story about the motorized bike issue on June 17, 2019. The staff were ganging up on Tenant J.B.

during the June 27, 2019 incident and Tenant J.B. finally yelled back that they were picking on him. There was a verbal altercation.

The Tenants provided a written statement outlining their position which states in part the following. The Resident Manager harasses and bullies them and other tenants. There had never been an issue with their dog walking around without a leash previously. They now carry their dog when on the building grounds. Their dog did not urinate on the wall in the lobby as alleged. Tenant J.B. stores his motorized bike in the rental unit as this is the only place he can charge it. They have never received a letter about not keeping the bike in the rental unit. They only asked about changing the locks on the rental unit. Staff attended the rental unit to confirm that the Landlord still had a key to the rental unit. They never refused entry to the rental unit. The allegations in Schedule A are not true.

Analysis

The Notice was issued under section 47(1)(d) of the *Act* which states:

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, or

(iii) put the landlord's property at significant risk...

There is no issue the Tenants received the Notice on July 04, 2019. The Tenants filed the dispute July 12, 2019, within the 10-day time limit for doing so 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 meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I note at the outset that witness A.B. only provided details about the October 02, 2018 incident. He did not testify about what he observed or heard in relation to any other incident outlined above. It is not sufficient for a witness to state that they “can attest” to other incidents without providing testimony about what they observed or heard in relation to those incidents. This statement is of little to no evidentiary value. It is not sufficient to corroborate the testimony of witness J.H.

In relation to the October 02, 2018 incident, witness A.B. testified that Tenant J.B. used inappropriate language when speaking to him. Tenant J.B. denied this. The Landlord has not submitted compelling evidence in support of witness A.B.’s testimony. The Landlord has not met their onus to prove this incident. I do accept that Tenant J.B. asked witness A.B. if he got paid to be rude as Tenant J.B. acknowledged this. I do accept this was an unnecessary and inappropriate comment. However, I am not satisfied this alone justifies ending the tenancy.

In relation to the December 12, 2018 incident, witness J.H. testified that Tenant J.B. refused to put a leash on his dog. I do not understand the Tenants to agree Tenant J.B. did this. The Tenants take the position that the allegations are false. I am not satisfied Tenant J.B. refused to put a leash on his dog or pick the dog up. Even if Tenant J.B. did, I understand from witness J.H.’s testimony that this did not continue to be a problem and therefore I am not satisfied this alone justifies ending the tenancy.

I do not accept that the Tenants’ dog urinated in the lobby. Given the testimony and evidence provided, I do not accept that anyone saw this happen. I understand from witness J.H.’s testimony that he did not see this happen but believes it was the Tenants’ dog. The Tenants deny that their dog urinated in the lobby. The Landlord has not provided sufficient compelling evidence that it did.

In relation to the January 09, 2019 incident, I am not satisfied Tenant J.B. changed the letters on the rental office door. Given the evidence provided on this point, I do not accept that R.E. saw Tenant J.B. do this. The Tenants deny Tenant J.B. did this. The Landlord has not provided sufficient evidence that Tenant J.B. did.

I am not satisfied the Tenants changed the locks on the rental unit. I do not find the Landlord's evidence on this point clear or compelling. The Representative could not provide further information on this issue. The Landlord did not call R.E. as a witness to explain how he came to know the Tenants had changed the locks. The Tenants deny that they changed the locks. The Tenants submitted an audio recording that seems to include a staff member trying their keys in the locks. The audio does not support that the locks were changed. The Landlord has not submitted sufficient compelling evidence that the Tenants changed the locks to the rental unit.

I accept Tenant J.B. is storing his motorized bike in the rental unit and taking it up and down the elevator as I understand the Tenants to acknowledge this. This is contrary to term 20 of the tenancy agreement. I am not satisfied Tenant J.B. has caused damage to the elevator as the Landlord has not submitted sufficient compelling evidence showing this. I am not satisfied the bike being in the rental unit poses a risk in the absence of further evidence supporting this statement. I am not satisfied the breach of term 20 of the tenancy agreement meets any of the subsections of section 47(1)(d) of the *Act* on its own given the nature of the issue.

I am not satisfied Tenant J.B. swore at, or used derogatory language towards, the Resident Manager on June 27, 2019. Witness J.H. testified that Tenant J.B. did. Tenant J.B. denied that he did. The Landlord has not submitted compelling evidence in support of witness J.H.'s testimony. The Landlord has not met their onus to prove this incident occurred.

I accept that there was a verbal altercation between Tenant J.B. and the Representative later in the day on June 27, 2019 as I understand the Tenants to acknowledge this. Further, both the Representative and witness J.H. testified to this. I do not accept the testimony of witness J.H. that Tenant J.B. swore at the Representative as this is not stated in the outline in Schedule A and the Representative did not testify that this occurred. I am not satisfied this one verbal altercation alone justifies ending the tenancy in the absence of further details and evidence about the altercation.

I have considered whether the incidents I am satisfied occurred taken together are sufficient to meet the subsections of section 47(1)(d) of the *Act*. These include the following:

- October 02, 2018, Tenant J.B. asked witness A.B. if he got paid to be rude;

- Tenant J.B. is storing his motorized bike in the rental unit and taking it up and down the elevator in breach of term 20 of the tenancy agreement; and
- June 27, 2019, Tenant J.B. had a verbal altercation with the Representative.

I accept that a pattern of unacceptable or inappropriate behaviour can lead to a tenancy ending pursuant to section 47(1)(d) of the *Act*. However, I am not satisfied the above incidents justify ending this tenancy pursuant to section 47(1)(d) of the *Act*. I am not satisfied the number of incidents or time period over which they occurred satisfies section 47(1)(d) of the *Act*. Nor am I satisfied the incidents are serious enough to warrant ending the tenancy pursuant to section 47(1)(d) of the *Act* at this point. I note that I do find verbal altercations serious; however, here there is a lack of evidence about the verbal altercation such that I am not satisfied it justifies ending the tenancy.

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*.

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*.

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: September 19, 2019

Residential Tenancy Branch