



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENTS R US PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT FFT

Introduction

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord's agent, LH ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. The hearing exceeded the 60 minutes allotted, but was extended a further 27 minutes to allow both parties the full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution.

The tenant confirmed receipt of the 1 Month Notice dated November 22, 2019, which was served to him by way of registered mail. I find the tenant deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the *Act* on November 27, 2019, 5 days after mailing.

Preliminary Issue – Service of Evidence

The landlord served their evidence package by way of registered mail on January 20, 2020. The tenant testified that they did not have an opportunity to review the landlord's evidence package as it was not received until January 23, 2019, a few days before the hearing.

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case the landlord failed to submit their evidence within the required timelines. and the tenant testified that they did not have the opportunity to review the landlord's evidence package. I find the admission of this evidence would be prejudicial to the applicant. On this basis I find that there is undue prejudice by admitting the landlord's late evidence. For these reasons, I exercise my discretion to exclude the landlord's evidentiary materials for this hearing.

The tenant served the landlord with more than one evidence package. On January 27, 2020, the RTB received further evidentiary materials. The landlord acknowledged receipt of the tenant's evidence, with the exception of these evidentiary materials submitted 1 day prior to the hearing date.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

I find the tenant's last evidence package was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case the landlord did not have the opportunity to review the late evidence submitted by the tenant. I find the admission of this evidence would be prejudicial to the respondent. On this basis I find that there is undue prejudice by admitting the tenant's

late evidence. For these reasons, I exercise my discretion to exclude the tenant's late evidence. As the previous evidence was acknowledged as received by the landlord, I find that these materials were served in accordance with section 88 of the *Act*, and these materials will be considered.

Preliminary Issue – Tenant's Monetary Claim

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's application for monetary compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy, and the time allotted is not sufficient to allow the tenant's monetary claim to be heard along with the application to cancel the 1 Month Notice to End Tenancy.

I exercise my discretion to dismiss the tenant's application for monetary compensation with leave to reapply.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recovery of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on June 1, 2015, with monthly rent currently set at \$995.00 payable on the first of each month. The landlord collected, and still holds, a security and pet damage deposit of \$480.00 per deposit.

The landlord issued the notice to end tenancy providing the following grounds:

- i) The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord included the following details on the 1 Month Notice for why they wished to end this tenancy:

“Tenant submitted attached letter with RTB file... The owners/shareholders/directors and management find this letter Mr. S submitted is libelous against the owners/shareholders/directors, their agent LH and MH, damaging their reputation both personally and professionally with numerous false allegations and he is antagonizing and fomenting”.

The tenant was involved in a previous arbitration hearing between another tenant and the landlord for the cancellation of a 1 Month Notice to End Tenancy issued to that tenant. The tenant in this hearing provided a draft letter that was submitted in evidence for that hearing, in support of the tenant who had received the 1 Month Notice to End Tenancy. The 1 Month Notice to End Tenancy was issued on September 20, 2019, and was disputed by that tenant. A hearing took place on December 5, 2019, and the 1 Month Notice was cancelled as per the decision dated December 9, 2019.

The landlord’s agent, LH, testified in this hearing that the tenant has interfered with, and disturbed the landlord and other tenants in the building by making libelous allegations against the company and agent. LH described the letter that was submitted in support of the tenant in the previous dispute as “vitriol”, stating that the tenant is interfering with the process, and landlord’s rights and obligations in managing the building and tenancies.

The landlord’s agent testified that the tenant would engage in conduct that interferes with the landlord’s ability to perform their job by taking photos, posting notices, and acting aggressive towards other tenants.

The tenant testified that the landlord is the one making false accusations and issuing malicious notices. The tenant called several witnesses in the hearing. CM, a tenant in the building, testified that she is a long-term tenant who has been residing in the building for 13 years in March. The tenant testified that she had also been threatened with eviction twice by landlord’s agent. CM testified that she had observed LH act in an intoxicated manner, and was “looking for a fight for no reason”. CM testified that LH has acted inappropriately in front of her 14 year old daughter, and has called her a “bitch”. LH disputes that she has ever been inebriated, and that the testimony was slanderous.

MM also testified on behalf of the tenant in this hearing. MM testified that he was at the tenant's rental unit twice when he had observed LH screaming, yelling, and taking photos. MM testified that LH was asked to leave as she did not have permission to take photos.

BH, another tenant, also testified on behalf of the tenant in this hearing. BH testified that he has also been served with a Notice to End Tenancy by the landlord, and that the agent's son has told him to "F Off". BH testified that when he reported the incident to LH, LH laughed and served him with a 1 Month Notice to End Tenancy. BH testified that he was fearful of the agent's son, and that he has suffered mental health issues as a result. BH testified that he has been threatened by the landlord, and her son, and that he had contacted the tenant to assist him for his previous arbitration hearing to cancel the 1 Month Notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the relationship between both parties has deteriorated significantly. Despite this deterioration of the relationship between both parties, the landlord still has the burden of proving that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, as allowed by section 47 of the *Act*.

The landlord's agent, LH, testified that the tenant has interfered with her ability to perform her functions as a landlord, and considered the tenant's behaviour to be malicious and libelous. Although the tenant's behaviour may have caused the landlord extreme distress, the onus is still on the landlord to support that the tenant has significantly interfered or unreasonably disturbed the landlord or other tenants or occupants to the extent that this tenancy should end on this basis.

While the tenant called several witnesses in support of his application, the landlord did not. The tenant argued that the landlord was in fact the party who was acting in a

malicious and retaliatory manner, and that other tenants in the building have been served with 1 Month Notices for voicing their concerns.

Despite the landlord's allegations that the tenant has acted in manner that interfered with her duties, and although the landlord has a duty to manage the building, and issue Notices to End Tenancy for contraventions of the *Act* and tenancy agreement, I find that the tenant had provided compelling witness testimony that supports the tenant's position that the landlord's decision to issue the 1 Month Notice was strictly motivated by the landlord's desire to act on the interpersonal conflict between the parties. I am not satisfied that the tenant has contravened the *Act* or tenancy agreement. A tenant has the right to dispute a 1 Month Notice under section 47 of the *Act*, and a tenant has the right to provide sworn testimony, as well as call witnesses for a hearing.

In light of the conflicting testimony between both parties, I am not satisfied that the landlord has established on a balance of probabilities that the conflict arises solely from the tenant's actions, rather than due to interpersonal difference between the parties. I am not satisfied the landlord had provided sufficient evidence to support that this tenancy should end on the grounds that the tenant had significantly interfered with or unreasonably disturbed the landlord or other occupants. Accordingly, I am granting the tenant's application for cancellation of the 1 Month Notice. The 1 Month Notice dated November 22, 2019 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenant's application to recover the filing fee for this application.

Conclusion

The tenant's application for monetary compensation is dismissed with leave to reapply.

The landlord's 1 Month Notice to End the Tenancy dated November 22, 2019 is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

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: February 6, 2020

Residential Tenancy Branch