



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 Tenant on March 20, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 10, 2020 (the "Notice").

This matter originally went before an Arbitrator May 15, 2020 and was adjourned. An Interim Decision was issued May 15, 2020. The hearing was reconvened May 28, 2020 and a decision was issued June 02, 2020. The original Arbitrator upheld the Notice and issued an Order of Possession for the rental unit.

The Tenant sought and was granted a review hearing based on new and relevant evidence being health records of the Tenant. The review Arbitrator suspended the original decision and order issued June 02, 2020 until the review hearing is completed.

The review hearing came before me July 10, 2020. The Tenant appeared at the hearing with the Advocate, Legal Counsel and a Witness. The Witness exited the call until required.

The Agent for the Landlord appeared at the hearing with the Building Manager. I explained the hearing process to the parties. The Tenant, Agent and Building Manager provided affirmed testimony.

The Tenant had submitted the further evidence of her health records. The Landlord had not submitted further evidence. The Agent confirmed receipt of the review decision, review hearing documents and health records. The Agent advised he received the health records June 23, 2020. The Agent did not take issue with admissibility of the

health records. The parties confirmed there were no issues with service of evidence from the original hearing.

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 and submissions of the parties. I have only referred to the evidence I find relevant in this decision.

I note that I did not hear from the Witness during the hearing as the Agent agreed to admit the facts the Advocate sought to elicit from the Witness.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2015 and is a month-to-month tenancy.

The Notice is addressed to the Tenant, although her name is spelled wrong. It refers to the rental unit. It is signed and dated by the Agent. It has an effective date of April 30, 2020. The grounds for the Notice are that the 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; and
- Engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

Legal Counsel did not take issue with the form or content of the Notice.

The Agent confirmed the Notice was sent to the Tenant by registered mail March 10, 2020. The representatives for the Tenant acknowledged the Tenant received the Notice March 13, 2020.

The basis for the Notice is outlined in the Details of Cause on the Notice as follows:

On the evening of...February 20, 2020...[the Tenant] was screaming in the hallways/building, yelling profanities, banging on suite doors, and holding a large knife. The landlord received several complaints about this incident and also spoke with the witnesses. [The Tenant] was screaming phrases like "I know she's in there get her out!" and "You wanna [profanity] go [profanity], come out here!". The banging on the doors lasted a couple minutes and shook the walls of the suite. The residents were extremely terrified. Four police vehicles were at the building within minutes of the first call to the police.

The Agent made the following submissions. On February 20, 2020, the Tenant caused a significant interference and unreasonable disturbance in the building. She also jeopardized others' health and safety. Statements from witnesses have been submitted. The witnesses observed the Tenant with a knife, heard the phrases the Tenant was saying and heard the Tenant yelling. This was a serious and traumatic event in the building. The Tenant is being evicted because of this incident and the disturbance she caused.

The Agent submitted that there is nothing in the Tenant's health records that would justify changing the original decision. The Agent made submissions about the Tenant's health records pointing to specific pages and references throughout. A summary of the main points is as follows.

Nowhere in the medical records does it state that the Tenant is not a risk to herself or others. The records show the Tenant has or had suicidal and homicidal thoughts. The Progress Notes outline the February 20, 2020 incident and state that the Tenant "took a set of knives to her neighbour's door". The Medical Certificate shows the Tenant was examined February 23, 2020 and hospitalized due to "psychosis associated with aggressive thoughts/behaviours". As shown in the Progress Notes, three days prior to being discharged, the Tenant had auditory hallucinations and identified the voices as the same people she heard during the February 20, 2020 incident. The Plan of Care notes about the Tenant state, "wielding knives to protect self".

The Agent made the following submissions about the medical records. They show the Tenant posed a significant risk to the health and safety of herself and others on February 20, 2020. They show the Tenant was still experiencing auditory hallucinations after being in the hospital for 10 days, on medication and under the care of doctors. They do not show that the auditory hallucinations went away.

The Agent further testified as follows. The Tenant called him on April 09, 2020 about the Building Manager harassing her. The Tenant said the Building Manager was waiting at doors. The Tenant said the Building Manager was dating her ex-boyfriend. The Tenant stated, "I feel like I'm going crazy".

The Agent testified that he called the Advocate, who is the Tenant's mother, about the April 09, 2020 incident and the Advocate seemed concerned when he told her he was thinking of calling a third party about it.

The Agent raised concerns about the Tenant thinking the Building Manager is dating her ex-boyfriend and whether the Tenant will act on those beliefs given the February 20, 2020 incident occurred because the Tenant thought her ex-boyfriend was in the unit she attended with a knife. The Agent submitted that it is concerning that the Tenant now believes the Building Manager is dating her ex-boyfriend.

The Agent testified that other tenants in the building are scared. The Agent testified that one of the witnesses was in tears after the original hearing. The Agent submitted that the Tenant's actions have had a significant impact on the other tenants. The Agent submitted that the Tenant does not have a right to disturb other tenants and that he has an obligation to protect other tenants.

The Building Manager provided testimony about the Tenant, her relationship with the Tenant and how the February 20, 2020 incident has affected other tenants. A summary of the main points made is as follows. The incident traumatized other tenants. She has spent time calming other tenants down. The other tenants have been left to handle the fear that resulted from the incident on their own. Although the incident is in the past, other tenants avoid the Tenant and experience physical responses when they leave their apartments. The incident had a significant impact on other tenants in the building.

The Agent sought an Order of Possession for the end of August.

The Advocate acknowledged the following points. On February 20, 2020, the Tenant went into the hallway of the building with a knife “wanting to confront and fight” another tenant in the building. The Tenant was yelling, which was disruptive to others. Other tenants in the building called police.

The Advocate pointed out that the “other tenant” was “M”, and not a real person.

The Advocate made the following submissions.

Three other tenants in the building were witnesses to the incident. However, only one other tenant saw the Tenant. The other two tenants only heard the Tenant banging. The idea that all of the other tenants in the building witnessed the incident and are scared is not correct.

The Tenant does not deny that she had a knife and went to the fourth floor because she believed “M” was there. The Tenant wanted to hurt “M”. She wanted to cut “M”’s ponytail off. The Tenant wanted to harm an imaginary person, “M”. Nobody was harmed. The Tenant was not threatening other tenants in the building.

The Tenant had a psychotic break. This was a single event in five years. The psychotic break has been resolved.

The Tenant is still at risk for auditory hallucinations as there is “no magic pill that will take that away”. April 09, 2020 was the last time the Tenant had an auditory hallucination. The Tenant started medication in January of 2020 that takes four to six weeks to work. In February, the medication was not yet fully effective. On April 09, 2020, the Tenant called the Agent because she was having auditory hallucinations where she thought the Building Manager was talking to her ex-boyfriend. Nobody was harmed. When the Agent called, she went and took the Tenant to emergency. The Tenant is taking counselling and learning strategies for what to do when she has auditory hallucinations.

The Advocate reviewed the community supports the Tenant has and receives.

Legal Counsel submitted that the Tenant does not own a large knife and cannot use a large knife due to physical limitations. He submitted that the Tenant had not had an incident like the February 20, 2020 incident in five years and has not since.

In relation to the medical records, I told the representatives for the Tenant that they needed to point out the relevant portions of the records they say support their position. The Advocate referred to the Discharge Summary and Emergency Report. The Advocate pointed to the notation in the Discharge Summary showing “unspecified psychosis” and “resolved”.

The Advocate took the position that there is no risk an incident like the February 20, 2020 incident will happen again because the psychotic break has been resolved. I asked if the medical records show that there is no risk such an incident will happen again. The Advocate said they were told it would not happen again. The Advocate acknowledged that the auditory hallucinations are what lead to the psychotic break. I asked if there was documentary evidence before me confirming the Tenant has not had auditory hallucinations since April 09, 2020. The Advocate advised that this would be in doctor’s notes that are not before me.

In relation to the Agent’s submissions about the medical records showing the Tenant has homicidal ideations, the Advocate submitted that it is just an ideation, the Tenant is not taking actions upon it and it is an ideation, not a threat. The Advocate also pointed out that homicidal ideations are not mentioned in the Discharge Summary.

The Tenant outlined the physical and mental health challenges she has. The Tenant outlined details about herself and why she likes living in the rental unit.

The Tenant testified as follows.

She is sorry for the February 20, 2020 incident and the anxiety it caused. There have been no complaints from the Landlord about her other than the February 20, 2020 incident.

In October of 2019, she started having auditory hallucinations. In January of 2020, she had a major seizure. She also had auditory hallucinations. She had her medication increased and was put on medication that takes three to six weeks to take effect.

On February 20, 2020, she was in her apartment. She thought “M” was in another unit talking to her ex-boyfriend. She went up to the unit with a pairing knife. She knocked on the door of the unit and said things such as “come out and fight me [profanity]”. She saw someone poke their head out of another unit. She heard someone say they were going to call the police. She went back to the rental unit, put the knife away and waited

for the police. She does not remember banging on the door of a unit on her floor. The police attended. She was taken to the hospital.

On February 22, 2020, she had further auditory hallucinations.

The Tenant testified about what occurred while she was in the hospital. She testified that the medications she was taking started taking effect. The Tenant testified that she was discharged March 06, 2020. The Tenant testified that someone was with her everyday for the first two weeks that she was back at the rental unit. The Tenant outlined her day to day supports.

The Tenant further testified as follows. On April 09, 2020, she thought she heard the Building Manager upstairs in the unit above her talking to her boyfriend so she called the Agent to report the situation. The Agent called her mother who took her to emergency. She was discharged because the incident was not deemed to be important.

The Agent questioned the Tenant who responded as follows. She does not recollect telling the Agent the Building Manager was harassing her or that she felt she was going crazy during the April 09, 2020 phone call. She has not had auditory hallucinations since April 09, 2020.

I clarified with the Tenant that she does not know if she told the Agent the Building Manager was harassing her and did not say that she felt she was going crazy.

The Advocate wanted to call the Witness to testify as follows. About a support group the Tenant regularly attends. That the Tenant's participation is appropriate. That the group provides ongoing support and likely will forever. That the group meets four days a week. To demonstrate that the Tenant has ongoing community support. The Agent agreed I could accept these points and therefore I did not hear from the Witness.

I have reviewed the medical records and other documentary evidence submitted and note the following.

The Discharge Summary states:

In the weeks prior to admission, she (the Tenant) was noted to have escalating emotional distress and was acting upon her auditory hallucinations and paranoid beliefs. She was fearful that people were coming into her apartment and may

have been threatening her safety or that of her guide dog. She was prepared to protect herself with knives and at one point went out into the apartment hallway with knives...

In initial presentation...Thought content revealed paranoid and persecutory beliefs that were congruent with her auditory hallucinations...She was not intending to cause violence to anyone but was prepared to defend herself...

She responded fairly well to...being in hospital...she did not show persistent delusions of paranoia or persecution. Her auditory hallucinations diminished in intensity and she was able to reality test them with assistance and reassurance...

At the time of discharge, there was no evidence for major depressive episode, mania or persisting psychosis. Her anxiety was at a baseline...

Discharge Diagnoses

1. Unspecified psychosis; resolved...

The Tenant provided written submissions for the first hearing which state in part:

On February 20, 2020 [the Tenant] had a psychotic break. During this episode, [the Tenant] was having auditory hallucinations and was believing that the tenant above her in apartment...was trying to attack her.

[The Tenant] went down the hall and up to the forth floor wanting to confront and fight the tenant there. No one opened the door of [the unit]. ([The Tenant] does not know who lives in [the unit].)...

...While [the Tenant] was yelling and we recognize this would be disruptive, no one was in the hallway or harmed...

The Agent submitted a typed statement about the April 09, 2020 incident. It is clear the Agent wrote this April 09, 2020 as the evidence shows he forwarded the typed statement to the Advocate that day. It states in part the following. The Tenant called the Agent complaining about the Building Manager harassing her. The Tenant said the Building Manager is standing outside the door of the unit above the Tenant. The Tenant

mentioned the Building Manager is dating her ex-boyfriend. The Tenant stated that she feels like she is going crazy.

The Landlord submitted messages and a signed statement from D.W., a tenant on the fourth floor, which state in part the following. D.W. or their girlfriend called the police as a woman was standing in the hallway in front of the elevator and another unit screaming that “she was going to F them up”. D.W. poked their head out to see what was going on and the woman was holding a large steak knife. He heard the woman screaming threats in the hallway.

The Landlord submitted a signed statement from H.M. stating in part as follows. H.M. heard really loud screaming down the hall. Then a woman was pounding on their door and screaming “I know she’s in there get her out!” The walls were shaking she was pounding so hard. This lasted a couple minutes. H.M. believed they would have had to physically defend themselves if they had opened the door. I note that the statement was written February 21, 2020, the day after the incident.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. I accept the Tenant received the Notice March 13, 2020. The Agent did not dispute this, and it accords with the Agent’s testimony about when the Notice was sent. The Tenant filed the Application March 20, 2020, within time.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 47(d) of the *Act* 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,

I am satisfied that, on February 20, 2020, the Tenant went up to the fourth floor to the unit above hers with a knife and was yelling such that other tenants called police. The Tenant did not dispute this and acknowledged this occurred.

The Tenant and her representatives also acknowledged the following. The Tenant went into the hallway with a knife wanting to confront and fight another tenant in the building. The other tenant was "M", not a real person. The Tenant knocked on the door of the unit above her and said things such as "come out and fight me", but using profanity.

I am satisfied that D.W. and H.M.'s accounts of the February 20, 2020 incident as outlined in their statements are accurate. I have not been advised of any reason either D.W. or H.M. would exaggerate or lie about the incident. The accounts are detailed. The accounts are generally consistent with what the Tenant acknowledges occurred. H.M.'s statement was written February 21, 2020, when the incident would have been fresh in their mind.

I am satisfied that one tenant in the building observed the incident and two tenants in the building heard the incident as the Advocate acknowledged this.

Based on the above, I am satisfied the Tenant significantly interfered with or unreasonably disturbed other occupants of the building.

Based on the evidence from D.W., I am satisfied D.W. was sufficiently disturbed that they looked out into the hallway to see what was going on and then called police.

Based on the evidence from H.W., I am satisfied this tenant was disturbed by what they describe as "really loud screaming" and the Tenant pounding on their door for a couple of minutes such that the walls were shaking. I am also satisfied the disturbance was such that H.M. believed they would have had to physically defend themselves if they opened their door.

I am satisfied the February 20, 2020 incident amounted to a significant interference and unreasonable disturbance given the following. The Tenant was in common areas of the building yelling and pounding on doors. The Tenant was yelling things such as "she was going to F them up", "I know she's in there get her out!" and "come out and fight me", but using profanity. In my view, these phrases could reasonably be interpreted as threatening. The Tenant was holding a knife at the time. The incident caused other occupants of the building to call police.

I find the nature of this incident to be serious given the use of threatening phrases and the presence of a knife.

This incident goes beyond the usual type of noise and disturbance tenants should reasonably expect to hear and experience in a multi-unit building where noise transfers.

The Agent and Building Manager testified about how the incident has affected other tenants in the building. Evidence of this from other tenants is not before me. However, I am satisfied based on the evidence of D.W. and H.M. that other tenants were disturbed and am satisfied it is likely the tenants who observed or heard the incident continue to be concerned about it given the nature and seriousness of the incident.

Given I am satisfied the Tenant caused a significant interference or unreasonable disturbance of other occupants of the building, I am satisfied the Landlord is entitled to end the tenancy under section 47(d)(i) of the *Act*.

I found during the hearing that the representatives for the Tenant attempted to minimize the significance of the February 20, 2020 incident. For example, they tried to emphasize that the Tenant did not harm anyone, the Tenant wanted to fight an imaginary person and the Tenant only wanted to cut the person's ponytail off.

As noted above, I find the incident serious and do not accept the attempts to minimize it. There is no allegation that the Tenant harmed someone. But this does not take away from the fact that the Tenant caused a significant interference or unreasonable disturbance. Further, the Tenant's own beliefs, motivations or intentions are not the point. The point is that the Tenant's actions significantly interfered with and unreasonably disturbed other tenants in the building. The points raised by the representatives for the Tenant do not change that the Tenant went into common areas of the building with a knife, yelled, made threatening comments and pounded on doors. It is these actions that the Tenant is being evicted for.

I acknowledge that the Tenant has physical and mental health challenges. However, I do not find that this changes the analysis that the Tenant caused a significant interference and unreasonable disturbance of other tenants in the building, which is the issue before me.

I acknowledge that the Tenant was admitted to hospital and that the psychotic break which lead to the February 20, 2020 incident was resolved. However, in my view, once a tenant has caused a significant interference or unreasonable disturbance, a landlord

is entitled to end the tenancy under section 47(d)(i) of the *Act*. The significant interference or unreasonable disturbance does not have to be ongoing or comprised of more than one event. A landlord does not have to show that the significant interference or unreasonable disturbance is likely to occur again. All a landlord must show is that the tenant has caused a significant interference or unreasonable disturbance. The Landlord has done so here. The Landlord is therefore entitled to end the tenancy. In my view, the steps taken to address the cause of the issue after the fact do not change the analysis.

I acknowledge that the Tenant has many supports in the community. However, this is not the issue. In my view, this goes to whether the Tenant is likely to cause further interferences or disturbances. This is not the issue before me. The issue before me is whether the Tenant has caused a significant interference or unreasonable disturbance. I am satisfied the Tenant has. This is grounds to end the tenancy. As stated, the Landlord does not need to show that this is likely to happen again.

In all of the circumstances, I am satisfied the Tenant caused a significant interference and unreasonable disturbance on February 20, 2020. I am satisfied this incident gave the Landlord grounds to end the tenancy.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Given I have found the Landlord had grounds to issue the Notice, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the Notice and upheld the Notice. I have also found that the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession.

Given the above, I confirm the original decision in the result; however, I vary the original decision in relation to the effective date of the Order of Possession. At the review hearing, the Landlord sought an Order of Possession effective August 31, 2020 and I issue the Landlord this. Therefore, the Order of Possession issued June 02, 2020 is set

aside and the Landlord is issued an Order of Possession effective at 1:00 p.m. on August 31, 2020.

Conclusion

The original decision is confirmed in the result; however, I vary the original decision in relation to the effective date of the Order of Possession. The Order of Possession issued June 02, 2020 is set aside and the Landlord is issued an Order of Possession effective at 1:00 p.m. on August 31, 2020. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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 *Act*.

Dated: July 17, 2020

Residential Tenancy Branch