



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On August 6, 2020, 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”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with his wife P.M., and with their advocate, M.B. D.W. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

M.B. advised that the Landlord was served with the Notice of Hearing package by registered mail on August 15, 2020 and D.W. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

She also advised that the Landlord was served the Tenant’s evidence by registered mail on August 27, 2020 and D.W. confirmed that the Landlord received this evidence. As service of this evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenant did not serve their digital video evidence to the Landlord, this digital video evidence has been excluded.

D.W. advised that he served the Landlord’s 36-page evidence package by placing it in the mail slot of the advocate’s office on September 7, 2020. M.B. confirmed that she received this package; however, it was faint and difficult to read, and the package only consisted of 17 pages. In addition, this evidence did not appear to be submitted to the

Residential Tenancy Branch as it was not attached to this file. The parties were advised that I would reserve judgement on this evidence and D.W. was provided with an opportunity to re-submit this evidence to the Residential Tenancy Branch by September 16, 2020 at noon.

The Landlord's evidence was re-submitted for consideration prior to the deadline, and when reviewing this evidence, it appears as if only 29 pages have been submitted. As this is not consistent with D.W.'s testimony that he submitted 36 pages of evidence to the Tenant, nor is it consistent with M.B.'s testimony that she received only 17 pages, I am not satisfied that what D.W. has alleged to have been served was reliable. As a result, I have excluded the Landlord's evidence and will not consider it when rendering this Decision.

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 Landlord's One Month Notice to End Tenancy for Cause, that his other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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?
- Is the Tenant entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on March 1, 2016, that rent is currently established at \$1,077.00 per month, and that it is due on the first day of each month. A security deposit of \$475.00 was also paid. A signed copy of the written tenancy agreement was entered into evidence.

D.W. advised that the Notice was served to the Tenant by posting it on his door on July 31, 2020 and the Tenant confirmed that he received this. The reasons the Landlord served the Notice are because 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 put the landlord’s property at significant risk”, and because the “Tenant has engaged in illegal activity that has, or is likely to: damage the landlord’s property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and jeopardize a lawful right or interest of another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was August 31, 2020.

M.B. advised that the Notice was an old form that did not contain any details of dispute. As such, this does not comply with the *Act* as the Tenant does not know the case against him. She provided previous Dispute Resolution Decisions to support this position.

D.W. replied that he obtained this form off the Residential Tenancy Branch website; however, he was informed that this would not have been possible as the forms on the website have been updated since the particular form that he used was available online. He stated that he did not know the forms had changed.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, it appears as if D.W. did handwrite in some reasons for service the Notice. As such, while I acknowledge that the Notice that D.W. used is an outdated form, I am satisfied that this Notice meets all of the requirements of Section

52 and I find that it is a valid Notice. However, D.W. is cautioned that the most current notices to end tenancy should be utilized in the future.

D.W. advised that in November 2019, he was in the elevator with the Tenant and the Tenant swore at him, spat at him, and threatened him. He made notes of this incident and contacted the police, but as they would not act on his complaint, he decided not to pursue this any further.

He then stated that on July 4, 2020, a resident below the rental unit complained to him about noise from above due to the Tenant's child running around at 1:30 AM. D.W. informed the Tenant about this complaint and the Tenant became aggressive, he started yelling, and he put his fist up to D.W.'s face. D.W. told the Tenant that he would have to leave, and the Tenant's wife came down and yelled at D.W. He stated that a resident from another unit witnessed this incident.

He also stated that it was discovered that the Tenant installed a children's swing into the ceiling of the rental unit without the Landlord's permission. As the ceiling contained asbestos, he advised the Tenant not to remove the swing without consultation.

He testified that on July 28, 2020, the Tenant's wife texted him at 10:08 PM because she had locked herself out of the rental unit and she requested a key to get back in. However, he did not receive this until later. The Tenant's wife came down to his door, banged on it, and yelled at him.

He submitted that the illegal activity that the Tenant engaged in were the threats that the Tenant made and that he was accused by the Tenant of being a racist. He advised that he had a statement from a witness that would support what he was alleging.

D.W. stated that the Tenant was served the Notice for the above reasons and because he is causing grief amongst the other residents of the building. He stated that the Tenant has been warned many times verbally and in writing.

P.M. advised that they have lived there since 2016 with no complaints. Both her and the Tenant refuted any altercation with D.W. in the elevator. Regarding the July 4, 2020 incident, she stated that they have a child who was sick, and while this child did make some noise, the Tenant went to apologize to D.W. for it. She stated that D.W. told him that he did not care. She stated that the resident below them apologized for banging on the ceiling as they did not realize that the noise was created by a child.

She confirmed that they installed a children's swing in the rental unit as they could no longer go outside due to the pandemic. She did not know that they needed the Landlord's permission to install this and there is minimal damage from this installation. She stated that she did not receive any written warning from D.W. to remove it.

D.W. confirmed that he did not give any written warning to have this removed.

She also acknowledged that she texted D.W. on July 28, 2020 because she had to take her son to the hospital; however, she could not as she inadvertently locked her keys, identification, and wallet in the rental unit. She waited for 15 minutes and after no response, she went down to D.W.'s suite to ask for a key. She stated that D.W. yelled at her and would not give her a key. She is pregnant and she would not have threatened or yelled at D.W.

She stated that they were never given any verbal or written warnings by D.W. about any issues.

D.W. questioned how the Tenant could have locked himself out of the rental unit if they did not have a key. He also questioned how the Tenant got back into the rental unit if he did not provide them with a key.

P.M. submitted that it is possible to lock the door without a key as there is a push button lock on the interior doorknob. The Tenant advised that he was given "three or four screwdrivers" by another resident of the building and he used these to unlock the door to the rental unit. However, when he was asked to elaborate on this, he was evasive and provided a vague explanation of how he used these tools to open the door.

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.

A Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Regarding the validity of the reasons indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the reasons on the Notice, while D.W. has provided testimony to support his position that the Tenant had engaged in behaviours that disturbed other residents of the building and initiated threats towards D.W., I do not find that there is any evidence submitted to corroborate these allegations. Furthermore, there is no consistent evidence of any verbal warnings by D.W., nor is there any evidence that the Tenant was warned in writing of any of the issues that D.W. brought forth. Moreover, I do not find it reasonable that had there been credible threats or assaults made by the Tenant to D.W., that the police would have simply ignored these and not investigated D.W.'s complaints.

While I found that the Tenant's attempted explanation of using tools supplied to him to gain entry into the rental unit to be dubious, implausible, and seemingly concocted during the hearing, I do not find that the doubts created by this unreliable testimony would outweigh D.W.'s lack of evidence in justifying service of the Notice. I do not doubt that the Tenant or P.M. have engaged in some actions or behaviours that may be unacceptable or inappropriate, and that these may potentially jeopardize this tenancy. Furthermore, I also do not doubt that there are personality conflicts between the parties and that D.W. has acted in a manner that could have exacerbated and escalated these differences.

Regardless, as I have found that the Landlord has not sufficiently substantiated the grounds for ending the tenancy under the reasons on the Notice, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As such, I permit the Tenant to deduct this amount from a future month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of July 31, 2020 to be cancelled and of no force or effect. This tenancy continues 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 *Residential Tenancy Act*.

Dated: September 16, 2020

Residential Tenancy Branch