



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 05, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 23, 2020 (the "Notice");
- For an order that the Landlord comply with the act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing with D.S. to assist. R.S. and A.T. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

A.T. confirmed the correct name of the Landlord which is reflected in the style of cause.

The Tenant and D.S. confirmed at the outset that the Tenant is only seeking to dispute the Notice and that the request for the Landlord to comply with the act, regulation and/or the tenancy agreement is not a separate issue. The Tenant and D.S. also withdrew the request for the filing fee.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

A.T. confirmed receipt of the hearing package and did not raise any issues in this regard.

The Tenant testified that she did not receive the Landlord's evidence.

A.T. testified that the Landlord's evidence was sent to the Tenant by registered mail and put in the Tenant's mail slot on December 05, 2020. A.T. provided Tracking Number 1 for the registered mail. I looked this up on the Canada Post website which shows a notice card was left December 07, 2020 in relation to the package. A.T. could not point to evidence to support that she put the package in the Tenant's mail slot December 05, 2020.

D.S. advised that the Tenant received a registered mail notice card. The Tenant said she had not picked up the mail because it is not easy for her to get around.

Pursuant to rule 3.15 of the Rules of Procedure (the "Rules"), the Landlord was required to serve their evidence on the Tenant so that the Tenant received it not less than seven days before the hearing. Pursuant to the definitions in the Rules, "not less than seven days before" means the day the evidence was sent, and the hearing date, are excluded from the calculation. Pursuant to rule 3.16 of the Rules, the Landlord has the onus to prove service of their evidence.

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 their onus of proof.

I am satisfied based on the testimony of A.T., Tracking Number 1, Canada Post website information and testimony of D.S. that the Landlord's evidence was sent to the Tenant by registered mail December 05, 2020. I am satisfied the evidence was served in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). I am satisfied the Tenant has not received the evidence as the Canada Post website shows this. However, the Tenant cannot avoid service by failing to pick up registered mail when she received the notice card. The Tenant has not provided a sufficient reason for failing to pick up the registered mail, such as being away. Therefore, the Tenant is deemed to have received the evidence December 10, 2020 pursuant to section 90(a) of the *Act*.

I find the Landlord failed to comply with rule 3.15 of the Rules as the Landlord served their evidence late, only three days before the hearing.

In relation to the evidence being put in the Tenant's mail slot, A.T. testified that this was done, the Tenant testified that she never received this. A.T. could not point to evidence

to support her testimony such as a witness statement, Proof of Service document or photo of service. Therefore, the Landlord has failed to prove service in this manner.

I outlined the above issues for the parties and told them I would consider whether the evidence should be admitted, meaning I would consider it, or excluded, meaning I would not consider it. I heard the parties on this issue.

A.T. provided the following submissions. The evidence provided was previously provided to the Tenant. The Tenant is dishonest. She is representing the Landlord and protecting the building and other tenants. The evidence is very important and should be included. The Tenant received the evidence.

R.S. testified that he saw the evidence package before it was provided to the Tenant. R.S. confirmed he did not see service of the evidence package. R.S. commented on the integrity of A.T. versus the Tenant.

D.S. submitted that the evidence should not be admitted because the Tenant has not had a chance to see it and cannot defend herself or respond to it.

I told the parties I would consider what had been said and make a decision about admissibility of evidence in my written decision. I told A.T. she should conduct the hearing as if the evidence will be excluded to ensure she has covered everything in case the evidence is excluded.

Pursuant to rule 3.17 of the Rules, I exclude the Landlord's evidence as I am only satisfied of service by registered mail and the evidence was served only three days before the hearing. I am not satisfied the evidence was new or not available earlier as A.T. did not state this and in fact stated that much of the evidence had already been served on the Tenant. I do not find it sufficient that much of the evidence had already been served on the Tenant prior to these proceedings. The purpose of the service requirements is to provide parties with notice of what the other party will rely on at the hearing. Here, I am not satisfied the Tenant had sufficient notice of what the Landlord was going to rely on at this hearing as I do not consider three days before the hearing sufficient notice. In the circumstances, I am satisfied it would be unfair to the Tenant to consider evidence served so late.

I will consider the written tenancy agreement and Notice given the nature of these documents.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony of the parties. I have considered the written tenancy agreement and Notice. I have not considered the remaining documentary evidence as it is not admissible. I will only refer to the evidence I find relevant in this decision.

I note that the parties had to be told during the hearing not to be laughing at the other's testimony as this was inappropriate and unacceptable. Pursuant to rule 6.10 of the Rules, I told the parties to put themselves on mute if they could not control themselves and that I would put them on mute if they continued to be disruptive.

I also note that this hearing was set for one hour and the parties were told this at the outset. R.S. and A.T. were reminded of this time limit during the hearing, particularly when R.S. and A.T. were going into issues not relevant to the issue I must decide. The Tenant and D.S. were very brief in their submissions. I provided R.S. and A.T. further time to make submissions but had to stop the parties around 10:45 a.m. as I had another hearing at 11:00 a.m. I told R.S. and A.T. that we could adjourn the hearing and complete it on another date if they wished. Neither R.S. nor A.T. asked that the hearing be adjourned.

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 and the parties agreed it is accurate. The tenancy started in 2006 with a previous owner of the rental unit.

The Notice was submitted. The grounds for the Notice are as follows:

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.
 - c. Put the landlord's property at significant risk.
- 2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - a. Damage the landlord's property.
 - b. Jeopardize a lawful right or interest of another occupant or the landlord.
- 3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.
- 4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The "Details of Causes" section of the Notice only relates to the Tenant illegally parking uninsured cars on the property, one of these cars catching fire and the Tenant using a parking stall for storage.

A.T. testified that the Notice was posted to the door of the rental unit September 23, 2020. The Tenant could not recall when she received the Notice. The Tenant and D.S. suggested that the Tenant did not receive the Notice or received it "weeks after" September 23, 2020.

I told A.T. and R.S. that I would only consider the grounds set out in the "Details of Causes" section of the Notice and not other issues.

A.T. testified as follows in relation to the grounds for the Notice. Parking is not included in the Tenant's tenancy agreement. She has informed the Tenant not to use parking stalls for storage. The fire marshal said nothing can be stored in the parking stalls. The Tenant has ignored the direction not to store belongings in the parking stalls and still has belongings in the parking stalls. The Tenant is parking uninsured vehicles in the parking stalls. She has issued the Tenant ten notices about the parking issue. The situation with the parking stalls is a breach of fire safety requirements.

A.T. testified that she is in fear and the building is not safe because of the Tenant. A.T. further stated that the building and other tenants are in danger.

In relation to the ground about a breach of a material term, A.T. said the Landlord is relying on the Crime Free Housing Addendum.

R.S. testified as follows in relation to the grounds for the Notice. A.T. has given the Tenant multiple warnings not to park in the parking stall. The Tenant is parking stolen cars in the stall. One of these cars caught fire and caused extensive damage. The fire is a serious issue. The Tenant is refusing to cooperate and still parks cars in the stall.

Neither R.S. nor A.T. could say what started the car fire. R.S. said the fire started in the car. R.S. said he believes the car was stolen and that there are stolen goods in the parking stall.

I asked R.S. and A.T. what evidence they were relying on to show the vehicles are stolen. The only evidence R.S. and A.T. could point to were photos of cars. R.S. testified that there are "revolving vehicles" parked in the stall. A.T. testified about overhearing someone fighting with a male about a stolen trailer and speaking to this person about reporting this to police.

R.S. testified about the Tenant having an unauthorized resident in the rental unit and unpaid rent. I did not hear further on these issues as neither is noted as an issue in the "Details of Causes" section of the Notice.

D.S. testified as follows. He is the Tenant's friend. He does not live at the rental unit. There has never been stolen vehicles in the parking stall. The Tenant was not issued any notices about vehicles in the parking stall until after the fire.

The Tenant testified that the parking stall was given to her as part of the tenancy at the start of the tenancy and she is allowed to use the parking stall. The Tenant could not point to documentation to support this position and said she was just told this.

The Tenant denied that she is parking uninsured vehicles in the parking stall. The Tenant denied that she is parking stolen vehicles in the parking stall. The Tenant denied that there are belongings being stored in the parking stall and said there is a snowmobile that is parked up against the wall. The Tenant denied that numerous different vehicles are being parked in the stall.

The Tenant agreed a car parked in the stall caught on fire. The Tenant did not know what caused the fire and said there is a police report about this. The Tenant testified that the car was towed and she never heard about it further.

D.S. said the Tenant will take care of the financial damages in relation to the car fire.

Analysis

Pursuant to section 52(d) of the *Act*, tenants must have notice of the reasons for being issued a notice to end tenancy pursuant to section 47 of the *Act*. Here, the “Details of Causes” section of the Notice only relates to the Tenant illegally parking uninsured cars on the property, one of these cars catching fire and the Tenant using a parking stall for storage. Therefore, I will only consider these issues and whether they provide the Landlord grounds to end this tenancy. I will not consider other issues raised, such as an unauthorized resident in the rental unit or unpaid rent as these are not noted as grounds for the Notice in the “Details of Causes” section of the Notice.

The Notice was issued pursuant to the following sections of the *Act*:

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,

- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property...
- (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 satisfied the Tenant received the Notice as the Tenant disputed the Notice. The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. A.T. testified that the Notice was posted to the door of the rental unit September 23, 2020. Therefore, the tenth day to dispute the Notice fell on October 03, 2020, a Saturday. The RTB office is not open Saturday and therefore the deadline to dispute the Notice fell to Monday, October 05, 2020, pursuant to the definition of "days" in the Rules. The Application was filed October 05, 2020 and therefore in time even assuming the Tenant received it on the day it was posted to the door of the rental unit.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

As stated, 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.

The basis for the Notice as stated in the "Details of Causes" and by A.T. and R.S. are as follows. The Tenant illegally parking vehicles in a parking stall not included in the tenancy agreement. The vehicles being uninsured. The vehicles being stolen. One of the vehicles catching fire and causing extensive damage. The Tenant storing belongings in the parking stall. The Tenant storing stolen goods in the parking stall.

I am not satisfied based on the admissible evidence provided that there have been uninsured vehicles, stolen vehicles, belongings or stolen goods in the parking stall. The parties gave conflicting testimony on these points. I am not satisfied that verbal testimony from R.S. and A.T. alone is sufficient to prove these points. I would expect to

see further evidence to support the verbal testimony; however, there is no such admissible evidence before me. Further, I have some concerns about the basis for A.T. and R.S.'s testimony on these points as it did not seem to be based on compelling evidence. A.T. and R.S. had difficulty pointing to evidence to support their position about the vehicles being stolen and pointed to photos, the fact that there are "revolving vehicles" and something an unknown third party said. None of this is compelling evidence that the vehicles were stolen.

In the circumstances, I am not satisfied there is sufficient compelling admissible evidence before me that there have been uninsured vehicles, stolen vehicles, belongings or stolen goods in the parking stall.

The Tenant acknowledged that a vehicle parked in the stall caught fire. The Tenant did not deny that this caused extensive damage. I acknowledge that a car fire on the property is a serious issue. However, none of the parties knew what caused the fire. Therefore, I am not satisfied the Tenant, or a person associated to the Tenant, did something or neglected to do something that caused the fire. Nor am I satisfied the Tenant, or a person associated to the Tenant, brought a vehicle onto the property knowing or anticipating that it would catch on fire. I am not satisfied this tenancy should end pursuant to section 47 of the *Act* because a vehicle associated to the Tenant caught on fire for an unknown reason.

The Tenant did not deny parking in one of the parking stalls and testified that this was part of her tenancy agreement from the outset and she is allowed to park in the stall. Even assuming the Tenant is parking in a stall which is not part of the tenancy agreement, I am not satisfied this behaviour meets any of the grounds outlined in the Notice at this point. The only grounds noted that this issue could meet are that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the lawful right or interest of the landlord or another occupant, the right being to park in the stall. However, I am not satisfied the sole issue of the Tenant parking in a stall not assigned to her is sufficiently serious to end this tenancy at this point for two main reasons.

First, there is no admissible documentary evidence before me of correspondence between the parties about this issue. D.S. denied that the Tenant received notices about the parking issue prior to the fire. The Tenant did not acknowledge receiving notices about the parking issue during the tenancy. In the circumstances, I am not satisfied of when such notices were provided or what these notices stated.

Second, I am not satisfied that the sole issue of the Tenant parking in a stall which is not part of the tenancy agreement is causing a serious problem for the Landlord or other tenants. I am not satisfied there is sufficient admissible documentary evidence before me to support this. I find the main issues raised by R.S. and A.T. were that the vehicles parked in the stall are uninsured or stolen. Again, I am not satisfied this is the case. In the circumstances, I am not satisfied that the sole issue of the Tenant parking in a stall which is not part of the tenancy agreement is sufficiently serious at this point to warrant ending the tenancy on the grounds noted.

In the circumstances, I am not satisfied the Landlord has provided sufficient admissible evidence to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. 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: December 16, 2020

Residential Tenancy Branch