



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT / OPC FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlords’ for:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- cancellation of the One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties confirmed that each side had been served with the other’s notice of dispute resolution form and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover the filing fee.

Are the tenants entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The circumstances surrounding the creation of the tenancy agreement are atypical and require some explaining. The rental unit is a two-level townhouse. Three bedrooms and two bathrooms are on the upper floor and a living room, kitchen, laundry room, and powder room are on the main floor.

Prior to the start of the tenancy, the rental unit was rented to two of tenant GH's cousins ("JM" and JM's sister). JM and her sister had been living in the rental unit for approximately 15 years. At the start of their tenancy, they paid the landlords a security deposit of \$550, which the landlord still holds in trust for JM. In August 2018, JM's sister passed away. Shortly thereafter, JM invited the tenants to move in with her. The landlords were agreeable to this. The landlords prepared two separate tenancy agreements, one for JM and one for the tenants. Each started September 1, 2018. These agreements each indicated that monthly rent was \$1,300. However, the landlords testified that this was an error, and it ought to have been \$650 (for a combined total of \$1,300). The landlord did not collect a security deposit from the tenants.

The parties agree that monthly rent owing by the tenants is now \$675.

The parties agree that, should JM not make a payment as required by her tenancy agreement, the tenants would not be liable for the arrears. Likewise, should the tenants miss a payment, JM would not be liable for their arrears. (I note that neither of these examples has ever occurred, but I include it to show what the parties' understanding is about the tenancies and the tenants' and JM's obligations towards each other.)

The written tenancy agreements are standard form agreements provided by the Residential Tenancy Branch (the "RTB") for Manufactured Home Park Tenancies, and not for Residential Tenancies. The parties have previously appeared before an arbitrator of the RTB where the arbitrator determined that, despite this incorrect form, the tenancy was a valid one under the Act.

At first, the living arrangement between JM and the tenants was amicable. However, in July 2019, the tenants' son ("BH") came to live with the tenants. JM did not attend the hearing, however she provided a written statement which the landlords referred to during the hearing. In her statement she wrote that:

I asked [GH] if [BH] was living with them because I knew he had a drinking problem and I would not have asked [the tenants] to move in if [BH] was with them. The answer was no. He lives in [redacted]. He had stayed with her earlier in the year while [RH] was in hospital after having a stroke. Once he was home he made her make [BH] leave.

JM wrote that BH moved in in July 2019 after having been thrown out of his old residence by the people he was living with. She wrote that GH indicated that BH would stay with them until he could find somewhere else to live. JM wrote that she didn't mind if BH stay there for two or three months but, due to his drinking, she didn't want him

living there permanently. She wrote that the tenants indicated that he would not be the case.

JM wrote that BH “is not a pleasant drunk” and allege that he was on probation and had to go to “treatment”. She alleged that he never did this. She wrote that BH was “belligerent and foul mouthed because he can’t drink in the house which he is doing anyway.”

JM wrote that BH started “looking for bottles to buy his booze and started bringing a street person back with him.” She wrote that she is not comfortable with an “street person” in the room next to where she sleeps. JM alleged that one night BH went into the tenants’ bedroom in the middle of the night disrupting their sleep and that she was woken up by BH swearing in the hallway. She wrote that when she got up to see what was happening, he accused her of hitting him.

JM concluded her statement by saying that she did not agree to BH living in the rental unit permanently, and now she is having health issues and that last month she suffered a stress-related heart attack. She wrote that she should be able to live her life in peace and not the turmoil she is dealing with.

The landlords did not provide any evidence to corroborate the allegations made by JM in her statement.

In addition to the allegations contained in JM’s statement, the landlords allege that BH attempted to break into a neighboring townhouse. They submitted a letter from the occupant of this townhouse (“**RC**”) who wrote:

On the evening of February 21, 2020 while away from home I received a call from my next door neighbor. She told me that the police had been called because someone was trying to break in. I later found out that a neighbor that lives across the street saw this and reported it. When I got home I called the officer that responded to the call and was told that it was a neighbor that stays 2 doors down. He was so intoxicated that he didn't realize that he was at the wrong door. The officer took him in to sleep it off.

I have seen this fellow before staggering around the neighborhood. This incident has now left my daughter nervous about being home. She thinks that someone will break in.

The landlords testified that that they have received several other complaints from other neighbours about BH’s conduct, but none of the neighbours wanted to put their complaints in writing.

On August 5, 2020, the landlords served GH with a letter which stated:

This notification is to notify you that you are in violation of the residential tenancy agreement. You have an unauthorized occupant living in the premises. This is only permitted with written permission dash residential tenancy application of the landlord slash owner of the property. This unauthorized occupant must vacate the premises immediately. Your full cooperation in this matter is expected.

At the hearing, the landlords were unable to reference a specific section of the residential tenancy agreement which prohibited BH from staying in the rental unit. Rather, they testified that this letter was a general notice to GH that BH's presence in the rental unit was not authorized by them and that he must leave.

BH did not leave the rental unit following the issuance of this letter.

On August 20, 2020, the landlords issued a one month notice to end tenancy for cause. The tenants disputed this notice. The matter came to a hearing on October 9, 2020 and, in a decision dated October 14, 2020, the notice was cancelled on procedural grounds (it did not disclose sufficient grounds to end the tenancy).

The landlords then served the tenants with a second notice to end tenancy for cause (the "**Notice**") on October 20, 2020 via registered mail which set out the basis for ending the tenancy. It listed the grounds for ending the tenancy as:

- 1) 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
- 2) the tenant or a person permitted on the property by 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; and
 - to jeopardize a lawful right or interest of another occupant or the landlord.

The landlords included further details on the Notice of the reason for ending the tenancy:

May 19, 2020 in the afternoon [JM] came to our house to inform us that since your son [BH] moved in against [JM's] wishes. [BH] who drinks everyday, becomes belligerent and is a disturbance to [JM] and our other tenants. February 21, 2020 [BH] was drunkenly attempting to break into our other tenants' home. Police came and he was taken away. The family of that unit expressed to [landlord TV] and I that due to this incident their young children are scared at night. The family also mentioned, the children don't like playing outside during the

day, because [BH] brings street people by. On August 5, 2020 we handed you a letter requesting that your son move out, we didn't receive a response. This is a family-oriented townhouse complex and your son [BH] is not on the tenancy agreement.

The tenants disputed the Notice on October 27, 2020. On their application they argued that the Notice is invalid as their surname is misspelled (it is spelled with an "o" in place of an "a").

Additionally, in GH's written statement included in the tenants' evidence and in GH's testimony, the tenants took the position that JM greatly exaggerates the BH's conduct in the rental unit, and that since the incident in February (where BH mistakenly attempted to enter the wrong townhouse) BH has not caused any disturbance to the neighbours.

GH did not deny that BH attempted to enter a neighbor's townhouse. She took issue, however, with the landlords' characterization of the incident. She denied that BH had been arrested by the police. Rather, she stated that the police took him to the drunk tank for the night. She also denied that BH was attempting to "break into" the neighboring townhouse. She testified that BH (who was intoxicated at the time) believed the neighbors' townhouse to be the rental unit and was trying to go home. GH testified that at the time of the incident JM did not make any complaint about it to her, except so far as to say that she was surprised the police didn't let BH go home to sleep it off.

GH did not dispute that BH was often intoxicated while in the rental unit. However, she disputed that BH, while in this intoxicated state, harassed or disturbed JM. GH testified that for the past eight months BH was doing his best to avoid JM due to the increasingly acrimonious relationship between the tenants and JM.

GH testified that the tenants have restricted themselves, for the most part, to the upstairs level of the rental unit. GH testified that she even has a microwave in her bedroom. The reason the tenants have done this, GH says, is because JM treats the entire rental unit like it is her sole domain. JM has taken to sleeping on the couch on the lower level of the rental unit and becomes angry if the tenants or BH make any noise on the lower level while she is asleep. GH testified that JM often sleeps in the afternoon thus making it difficult for the tenants to use the common living space.

GH argued that the tenants have just as much right to use the common areas of the rental unit as JM does, as they are both tenants of the landlord, but JM does not respect this right, Treating the entire rental unit as her own, and often referring to items as "my refrigerator" or "my washing machine". GH testified that this has made living in the rental unit very difficult. She speculated that this underlying tension is the reason for JM's complaints about BH's behavior.

Analysis

1. Spelling of Tenants' Name on the Notice

Fact that the tenant's surname was misspelled on the notice is of no significance as to the validity of the Notice.

Section 68(1) of the Act states:

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Based on the fact that the tenants applied to cancel the Notice, I find that they knew that the Notice was addressed to them. Nothing about the misspelling of their surname hindered their ability to properly dispute the Notice. As such, in the circumstances, I find that it is reasonable to amend the Notice so that the tenant's surname is spelled correctly.

2. Validity of Notice

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlords bear the evidentiary burden to prove it is more likely than not that the tenants have acted as alleged on the Notice.

Broadly speaking, the landlords are seeking to end the tenancy for three reasons:

- 1) the tenants have permitted an unauthorized occupant (BH) to reside in the rental unit;
- 2) BH has conducted himself in such a manner inside the rental unit so as to unreasonably disturb JM; and
- 3) BH attempted to enter a neighbour's townhouse, which resulted in the neighbours feeling unsafe.

I will address each of these in turn.

a) Is BH an Unauthorized Occupant?

The tenancy agreement does not specify that only individuals who are authorized by the landlord or who are listed on the tenancy agreement can live there. It does include the following language related to the number of occupants:

If the number of occupants on the manufactured home site is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end tenancy. Disputes regarding the notice may be resolved through dispute resolution under the *Manufactured Home Park Tenancies Act*.

I interpret "manufactured home site" to mean "rental unit" and "*Manufactured Home Park Tenancy Act*" to mean the "*Residential Tenancy Act*".

In light of the fact that the rental unit has three bedrooms, I do not find that one additional occupant is an unreasonable number of occupants. Therefore, I do not find that the tenants have breached this section of the tenancy agreement.

Policy Guideline 13 states:

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. *Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit.* The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant

As such I find that the tenants were not prohibited from allowing BH to move into the rental unit on a permanent basis. The landlords have no authority to end the tenancy solely on the fact that BH has moved into the rental unit.

b) Conduct of BH

The only evidence I have as to BH's conduct inside the rental unit is that of JM provided by way of a written statement. JM did not attend this hearing and as such I was not able to ask any questions of her nor were the tenants provided an opportunity to challenge her evidence by way of cross-examination. The landlords have not provided any evidence (be it testimony from other individuals or be it documentary evidence such as correspondence) that corroborates JM's written statement.

As such, I must weigh JM's written statement against the testimony of GH. I found GH's testimony to be credible. based on my understanding of how the tenants' tenancy came to be, I find it entirely believable that JM may feel a certain sense of entitlement to the rental unit. It has been her home for over 15 years. The tenants have lived there a little over two years. I find that such circumstances may have caused JM to have acted in such a way which would have deprived the tenants of the right to use the common areas of the rental unit in the manner they would have liked. I also find that due to this sense of entitlement, JM may have felt she had the authority to authorize or not authorize who could live in the rental unit. This is not the case, JM and the tenants both have equal rights under the Act. This extends to inviting occupants to stay in the rental unit.

Based on the evidence before me, I cannot say with any degree of certainty what caused the relationship between the tenants and JM to sour. it may be due to the way BH treated JM or it may be due to the fact that JM did not want BH to reside in the rental unit at all and that BH's very presence was an affront to her.

I also find that JM's conduct regarding use of the common space of the rental unit not to be reasonable. The tenants have an equal right to use all areas of the common space to the same degree as JM does, and JM does not have the right to unreasonably prevent them from so doing. Based on GH's testimony I find that JM did this.

I accept that BH may have been intoxicated while in the rental unit and may have caused some disturbance to JM. However, in light of what I have found with regards to JM's conduct towards the tenants, I do not find that any such disturbances would rise to the level warranting an end of the tenant's tenancy. Rather I would characterize them as part of an ongoing dispute between the tenants, BH, and JM in which none of the parties are blameless. As such, I do not find that BH *unreasonably* disturbed JM and I decline to order that the tenancy be ended on this basis.

c) BH's Attempted Entry into Neighbour's Home

The parties agree that the BH, while intoxicated, attempted to entry a neighbour's town house on February 21, 2019. The landlords have alleged this was an attempted break-in and the tenants claim it was a mistake. The landlords have not provided any evidence to support their assertion that this was an attempted break-in. Based on the fact that BH was released the following morning, and due to the lack of documentary confirmation

otherwise, I find it more likely than not that BH was not arrested following his attempt to enter a neighbour's town house. I accept the tenants' explanation of BH's actions, and find it more likely than not that, in his intoxicated state, he mistook the neighbour's townhouse for his own.

Based on the letter submitted into evidence of RC, I find that RC was not at home when BH attempted to enter the townhouse. In her letter, she mentions that her daughter is nervous about being home because she thinks someone will break in. I am not sure if the daughter was home when BH attempted to enter the house. The landlord bears the onus to prove this, as such, in the absence of evidence to the contrary, I find that the daughter was not home at this time.

I must first note that as neither RC nor her daughter were home when BH attempted to enter their townhouse and that, accordingly, they were not *directly* disturbed by this action. Had their neighbor not advised them that this occurred, BH's attempted entry would have had no impact on them. That being said, they were made aware of BH's action, and this has apparently had a negative effect on RC's daughter (I note that RC made no mention of the effect of BH's actions on her whatsoever). I cannot say to the extent that RC's daughter is or has been disturbed; all that is in the evidentiary record is that she is "nervous about being home".

Since February 21, 2020, there is nothing in the evidentiary record to suggest that BH has caused any disturbance to RC, her daughter, or any other neighbor. I understand from the landlord's testimony that they have received other complaints about BH from neighbors, but that the neighbors have not put these complaints in writing. As such I cannot assign any weight to these unspecified complaints.

In light of the facts that:

- 1) since February 21, 2020, BH has not caused any corroborated disturbance to his neighbors;
- 2) I am unsure as to the extent RC's daughter was disturbed by BH's action;
- 3) neither RC nor her daughter were present at the time BH attempted to enter their townhouse; and
- 4) this action was a drunken mistake and not an attempt to break into the townhouse,

I find that BH's attempted entry of RC's townhouse does not give rise to the level which would warrant an end to the tenants' tenancy. I accept that RC's daughter was disturbed upon learning of BH's actions, but given all the circumstances I do not find that BH *unreasonably* disturbed her.

As such, this incident does not warrant the ending of the tenancy.

d) Summary

I have addressed each of the bases upon which landlords have provided as a reason to end the tenancy. I have declined to find that any of them form an adequate basis to end the tenancy. As such I order that the Notice is cancelled and is of no force in effect.

Despite their success, I have found that the tenants and the tenants' son have disturbed JM and RC's daughter. I have merely found that this level of disturbance does not warrant ending the tenancy. Accordingly, I decline to order that the landlords reimburse the tenants their filing fee.

Conclusion

The tenants have been successful in their application. The notice is cancelled. The tenancy shall continue.

I dismiss the landlords' application without leave to reapply.

Neither party is entitled to recover their filing fee from the other.

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: January 22, 2021

Residential Tenancy Branch