



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAVINIA DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

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 January 08, 2021 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated December 30, 2020 (the "Notice").

The Tenant appeared at the hearing with the Articled Student and J.M. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant and Agent provided affirmed testimony.

The Agent confirmed the correct Landlord names which are reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The only issue that arose was in relation to two items of evidence which the Articled Student said the Tenant could not read. One of these items I cannot read and therefore have not relied on. The second item is email screenshots. I am able to read these. The Agent advised that the email screenshots show the original emails that have been submitted in other formats. I have relied on one of the email screenshots; however, I have confirmed that this email was also provided to the Tenant as a word document with the remaining evidence and therefore I have not relied on any evidence that the Tenant does not have or has not seen.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted as well as the

oral testimony and submissions of the parties. I will only refer to the evidence I find relevant in this decision.

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 June 01, 2011. Rent is due on or before the first day of each month.

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

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. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - b. Jeopardize a lawful right or interest of another occupant or the landlord

The Articled Student did not raise any issue with the form or content of the Notice when asked.

There was no issue that the Notice was posted to the door of the rental unit December 30, 2020 and received by the Tenant December 30 or 31, 2020.

The Agent raised the following issues in relation to the Tenant. The Tenant has not followed safety protocols in place due to the pandemic while in the building. Multiple other tenants have left the building due to the Tenant. The Tenant harasses neighbours by pounding on shared interior walls. The "Vincent Logs" state that the Tenant stomped on and scratched the floor. The Tenant makes the building an unstable and dangerous place to live. The Tenant and her behaviour cause stress to the landlords. The Tenant shows a pattern of behaviour of disturbing other tenants.

The Articled Student submitted as follows. The tenancy has been re-instated due to the Landlords accepting rent without stating it was for use and occupancy only and by issuing correspondence to the Tenant that implies she is still a tenant.

The Articled Student further submitted as follows. The Agent has a personal relationship with N.S. and K.M. who have provided evidence. The Landlords have not submitted sufficient evidence to prove the acts alleged in the Notice. The evidence shows the Landlords are attempting to evict the Tenant for personal reasons. There is no objective evidence of the alleged acts let alone evidence of a pattern of behaviour. The clip of the Tenant banging on the ceiling is a single incident which occurred two and a half months prior to the Notice being issued. The video does not show the ceiling being damaged. The evidence shows there is animosity between the family of the Landlords and the Tenant and that the Tenant is being evicted for personal reasons. The only evidence submitted from someone other than the family of the Landlords are the "Vincent Logs" which are unreadable, evidence relating to the October 15, 2020 incident and ceiling damage, an unsigned statement from a plumber, evidence about service of documents and irrelevant text messages from a neighbour.

The Tenant acknowledged at the hearing understanding that the Landlords continued to seek to end this tenancy based on the Notice. The Tenant acknowledged the Notice is the second eviction notice issued by the Landlords. The Tenant testified that most of what has been said about her is not true. The Tenant testified that the family of the Landlords harass her, yell at her, physically intimidate her and attack her.

In reply, the Agent denied harassing the Tenant. The Agent denied that the Tenant is being evicted over personal animosity. The Agent sought an Order of Possession one month after service on the Tenant.

Analysis

Policy Guideline 11 addresses implied waiver of notices to end tenancy at page two. I do not accept that the Landlords re-instated the tenancy for the following reasons. The Tenant acknowledged understanding that the Landlords continued to seek to end the tenancy based on the Notice, which is contrary to the position that the tenancy was re-instated. The Tenant disputed the Notice in January and never withdrew the dispute which indicates to me that the Tenant understood the Landlords continued to seek to end the tenancy based on the Notice. The Notice is the second eviction notice issued to the Tenant and therefore I find it reasonable to expect the Tenant to have understood that the Landlords continued to seek to end this tenancy.

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) and the following subsections:

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...

- (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;

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. There was no issue that the Notice was served December 30, 2020 and received by the Tenant December 30 or 31, 2020. The Application was filed January 08, 2021, within time whether the Notice was received December 30 or 31, 2020.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the October 15, 2020 video recording that the Tenant was banging or dropping something on her floor repeatedly and to such an extent that plaster was falling from the ceiling of the unit below. I am satisfied based on the text message from E. dated October 20th that the Tenant was making this noise until the early hours of the morning. I am satisfied based on the text from N.J. dated October 15th at 2:31 p.m. that the Tenant continued making similar noise into the following day.

In relation to the October 15th incident, I do not find it relevant whether the larger hole in the ceiling was caused by the Tenant. The video shows pieces of plaster falling from the ceiling due to the Tenant banging or dropping something on her floor. At the time the Tenant is banging or dropping things on the floor, the tenant below, who is recording, is not being loud as is clear from the video. It may be that the Tenant was behaving in this way due to previous noise from the tenant in the unit below. However, it is not the behaviour of the tenant in the unit below that is at issue before me. It is the behaviour of the Tenant that is at issue before me. I find the behaviour of the Tenant inappropriate and unacceptable given the extent of the banging and given it was occurring at a time when the tenant below was not being loud.

I acknowledge that the Tenant has submitted a video clip of the interaction between her and the lower tenant prior to the banging. I also acknowledge that the interaction is inappropriate and unacceptable as it relates to the tenant below. However, this does not justify the Tenant's subsequent behaviour and, again, it is not the behaviour of the tenant below that is at issue before me.

I also acknowledge the text messages between the Tenant and tenant below subsequent to the October 15th incident; however, I do not find that these excuse the Tenant's behaviour or detract from the seriousness of the incident.

I accept based on the email from K.M. dated December 09, 2020 in evidence as well as the statement of the Agent in evidence that the following incident occurred involving the Tenant on December 08, 2020. The Tenant was in the hallway. The Agent and K.M. passed the Tenant. K.M. asked the Tenant to stay away from her as she is immune compromised. The Tenant repeated "Stay away from ME!" in a mocking tone, swore at K.M. and called K.M. an inappropriate name and then jumped at K.M. and said "Boo!" getting "spittle" on K.M. or "showering her with warm air". The Tenant then called K.M. a further inappropriate name.

There were submissions made during the hearing, and there are comments in the materials submitted, about the Tenant not wearing a mask while in the building during the pandemic. I find the behaviour of the Tenant on December 08, 2020 inappropriate and unacceptable regardless of the pandemic or mask-related issues.

I acknowledge the submission that there is a personal relationship between the Agent and K.M. and that there are personal issues between these two and the Tenant. However, based on the email from K.M. and statement from the Agent, I am satisfied it is more likely than not that the December 08, 2020 incident occurred as described. The only contrary evidence I have is the Tenant's testimony that most of what was said about her at the hearing was untrue. I find the email and written statement more compelling than the Tenant's testimony that most of what was said about her was not true. I note that the Tenant did not specifically address this incident in her testimony. Nor is there an Affidavit or some written statement from the Tenant in evidence about this incident.

In the circumstances, I am satisfied the October 15, 2020 incident and December 08, 2020 incident occurred. I find these two incidents amounted to the Tenant significantly interfering with and unreasonably disturbing other occupants of the residential property. I am satisfied the Landlords had grounds to issue the Notice and uphold the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content. I also note that the Articled Student did not raise any issues in this regard.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Agent sought an Order of Possession effective one month after service on the Tenant and I issue the Landlords this pursuant to section 55(1) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective one month after service on the Tenant. 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: April 21, 2021

Residential Tenancy Branch