



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT LTD DBA COLUMBIA PLACE
APTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FFL
For the tenants: CNC FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the landlord and the tenant who are both seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on three 1 Month Notices to End Tenancy for Cause all of which were dated March 11, 2021 (1 Month Notices), and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notices and to recover the cost of the filing fee.

The tenant, counsel for the tenant, TL (counsel), an agent for the landlord, CF (agent), an account manager for the landlord, RL (account manager), and the building manager for the landlord, MG (manager) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and all participants were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an

investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

As the agent affirmed that they were not aware of a tenant's application and that no such application was served upon them, service of the tenant's Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence were considered. The tenant provided affirmed testimony that their Notice of Hearing, application and documentary evidence were served on someone at the front desk but could not recall a name or specific date in which they served. The tenant testified that the person served assured the tenant that they would pass the documents on to the appropriate party. The tenant was given 4 opportunities and over five minutes to review their documents and confer with their counsel to determine a specific date and provided the dates of March 11, 2021, then a date range of March 10th, 2021 to March 12th, 2021, and finally March 19th, 2021. At this point in the hearing the tenant was advised that given the agent's testimony that they had not been served and that the Notice of Hearing document for the tenant's application was dated March 22, 2021, that it would have been impossible to serve the document on March 10, 11, 12 or 19 of 2021. As a result, I dismissed the tenant's application due to insufficient service, without leave to reapply as the tenant is now beyond the time period permitted to dispute a 1 Month Notice and also is beyond the effective vacancy date listed on the 1 Month Notice, which was April 30, 2021.

Given the above, the hearing proceeded with the landlord's application only. I note that once my decision was made and the information regarding the tenant's Notice of Hearing document dated March 22, 2021 was provided, the tenant attempted to provide a 5th date that they served the landlord, which I advised the parties I would not be accepting. The reason for this is that the tenant changed their testimony 5 times in a period of 10 minutes and as a result, I did not find the tenant to be credible or consistent.

Counsel for the tenant stated that the tenant has a neurological issue; however, confirmed that it does not interfere with the tenant's ability to answer questions during the hearing.

Finally, while I find that failing to prove service on the tenant's application has the same effect as not disputing the 1 Month Notices, in the interest of fairness and the fact that section 55(1)(a) of the Act requires that the 1 Month Notices comply with section 52 of the Act, I permitted both parties to speak to the merits of the 1 Month Notices, which I will refer to as "1 Month Notice" for the remainder of this decision as all 3 notices refer to the same incident on March 4, 2021.

Issues to be Decided

- Are the landlords entitled to an order of possession based on the 1 Month Notice?
- Is either party entitled to recover of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began on February 1, 2021. The tenant wrote in their application that they were served on March 11, 2021, with the 1 Month Notice, all of which were dated March 11, 2021. The effective vacancy date of the 1 Month Notice were all dated April 30, 2021. Combined there are a total of 4 causes listed:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

The Details of Dispute section reads:

On Mar 4, 2021 around 4:48 p.m. we discovered [name of tenant] stole another tenants food delivery.

Before the video surveillance footage was reviewed, counsel stated that they do not object to what the video surveillance footage showed. In other words, the tenant and

their counsel conceded that the tenant admitted to taking a pizza and “gifting it” to someone else as the tenant claims they thought the pizza was abandoned.

The tenant provided a long explanation as to why they felt the pizza had been abandoned including a comment about the pizza being left for 2-3 hours. Both parties referenced a letter submitted by the landlord which reads:

Hello,

My friend [ME] ordered pizza when visiting me on March 4, 2021.

The pizza was ordered around 2-3pm PST and when we came downstairs to pick up the pizza was gone.

Pizza was from Little Caesars.

[RD]

Apt 802

[Reproduced as written except for anonymizing names to protect privacy]

The tenant testified that due to their belief that the pizza had been abandoned they claim to have listed the pizza on a website for people in need. The tenant testified that a few minutes after posting the pizza on the website for people in need, the pizza was taken. The tenant denies consuming the pizza and claims to have “gifted it”. The tenant claims the pizza is worth \$7.99 and was a cold pizza and that it was left unwanted for 2 to 3 hours. The tenant stated that when they opened the pizza and realized it was cold, they thought “well I have touched it now” so they did not want the perfectly good pizza to go to waste. The tenant claims the website they used was a “buy nothing” group.

The agent testified that the tenant was not in the lobby for a considerable period of time so would not have known it had been left for 2 to 3 hours as claimed during the hearing. The landlord also stated that they have no financial gain to evict the tenant as they have several vacancies; however, they can not permit people taking things that do not belong to them out of the lobby and that is why the 1 Month Notice was issued. The landlord confirmed that the police were not contacted regarding this incident. The landlord stated that there are over 500 people in the building and that the actions of the tenants were not reasonable nor should be excused.

When counsel asked the agent to agree that the pizza had been left for 2-3 hours, the agent did not agree as they did not know when the pizza was delivered so it could have

been a much shorter timeframe. I note that nobody was able to confirm when the pizza was delivered during the hearing.

Counsel submits that the tenant determined the pizza to have been abandoned and was gifting the pizza to someone in need and did not consume the pizza for themselves. Counsel asked the agent to identify what lawful right the tenant had jeopardized and the agent stated that they did not know.

Counsel also submits that the agent did not challenge the summary the tenant provided of events, although the landlord did state during the hearing that they had no evidence of gifting submitted and that all they know is that the tenant took an item from the lobby that did not belong to them. Counsel also made a note that they were not able to cross-examine the tenant from unit 802 who wrote the letter about the missing pizza. Furthermore, counsel submits that the tenant acted innocently and gifted the pizza and that the tenant is believable, credible and consistent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, although I find the tenant did not serve their application, which was dismissed without leave to reapply due to a service issue, I have considered the merits of the 1 Month Notice. Secondly, I disagree with counsel that the tenant is believable, credible and consistent and find that the tenant was inconsistent with dates during the hearing and provided no documentary evidence to support that they posted the pizza on any website to gift it to someone. Thirdly, I find that the pizza was never the property of the tenant to gift to someone and that I do not agree with counsel's submission that the action was "gifting" as I find that taking an item that does not belong to you is not gifting, it is stealing. Furthermore, I find it more likely than not, having reviewed the video surveillance footage, that with all the traffic in the lobby that the tenant could have reasonably determined if in fact the pizza had been abandoned and made no attempts in the video to do so, and I agree with the agent that the tenant was not in the lobby for a long enough period to determine if the pizza had been abandoned.

Therefore, I find the 1 Month Notice is valid, and that it complied with section 52 of the Act. I find the tenant unreasonably disturbed another occupant by taking something that did not belong to them, which in this matter was a pizza ordered by the guest of the tenant in unit 802, which is supported by the letter before me. I find the actions of the tenants were not reasonable and that claiming they were "gifting" something that did not

belong to them is the same as stealing as the pizza was never theirs to give away to someone else.

Given the above, I find the tenancy ended on April 30, 2021. As the parties confirmed that money was paid for June 2021, I grant an order of possession pursuant to section 55 of the Act for **June 30, 2021 at 1:00 p.m.**

If the tenant fails to vacate the rental unit, the tenant is reminded that they could be liable for all costs associated with enforcing the order of possession.

As the landlord's application was successful, I grant the landlord the **\$100.00** filing fee pursuant to section 72 of the Act. Pursuant to section 62(3) of the Act, I find the tenant's security deposit of \$750.00 is now \$650.00 effective immediately as I authorize the landlord to retain \$100.00 from the security deposit in full satisfaction of the recovery of the cost of the filing fee.

I do not grant the filing fee for the tenant as their application was dismissed due to a service issue.

Conclusion

The tenant's application was dismissed without leave to reapply due to a service issue.

The landlord's application was successful.

The tenant ended April 30, 2021.

The landlord is granted an order of possession effective June 30, 2021 at 1:00 p.m.

The landlord has been authorized to retain \$100.00 from the tenant's \$750.00 security deposit in full satisfaction of the filing fee under section 72 of the Act. I find the security deposit is now \$650.00 pursuant to section 62(3) of the Act.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 29, 2021

Residential Tenancy Branch