



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated March 1, 2021 (1 Month Notice), and to recover the cost of the filing fee.

The tenant, a witness for the tenant, JN (who did not testify), the landlord and a support for the landlord EK, (support) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they were served with the documentary evidence from the other party. While the tenant stated that they were not served until June 7, 2021, I find that the landlord complied with the Act and Residential Tenancy Branch (RTB) Rules of Procedure (Rules) in that the respondent has up until 7 days prior to the hearing to serve their evidence. As a result, I find the parties were sufficiently served. The landlord's document titled "Evidence" dated June 7, 2021 that was 2MB in size could not be opened and was excluded as a result as it could not be reviewed. I note that while the document was in .PDF format, it did not open like the other .PDF files submitted by the landlord so was either corrupt or was in a different file format and incorrectly labelled as a .PDF file.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing 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 would be emailed to them.

Issues to be Decided

- Should the 1 Month Notice cancelled?
- If yes, is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

There is no dispute that the tenancy started about 9 years ago. The tenant confirmed being served with the 1 Month Notice dated March 1, 2021 on March 1, 2021 as it was posted to their door. The tenant filed to dispute the 1 Month Notice on March 5, 2021, which is within the 10-day timeline provided under section 47 of the Act.

The landlord has alleged one cause on the 1 Month Notice, namely:

1. 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.

The landlord wrote in the "Details of Cause" section of the 1 Month Notice the following:

THIS IS THE SECOND EVICTION NOTICE FOR THE SAME BEHAVIOR PROBLEM. ON FEB 27TH YOU WERE YELLING & SWEARING & FREAKING OUT AGAIN. YOU AFFECTED 5 UNITS. IM SURE IF I WENT DOOR TO DOOR I WOULD FIND YOU AFFECTED THE WHOLE BUILDING. YOU GOT A SECOND CHANCE & YOU ARE AT IT AGAIN.

The tenant does not agree with the cause listed in the 1 Month Notice.

In support of the 1 Month Notice, the landlord presented their first witness, LG from Unit 6 (witness LG). Witness LG was affirmed. The following are the questions and answers

provided by witness LG with Q representing the question and A representing the answers from the witness.

Questions by Landlord

Q: What's been going on?

A: There has been banging and screaming at the door. And the landlord told me that the tenant has threatened my children and said they should be euthanized.

Questions by Arbitrator

Q: Did you ever personally hear threats from the tenant?

A: No, it was the landlord who told me.

Q: When was the last time you ever saw the tenant or heard them yelling or screaming?

A: 1 year ago.

Q: To confirm, have you had any contact within the past year with the tenant?

A: No.

Cross-examination by Tenant

No questions by Tenant.

Witness dismissed.

The landlord also presented a letter from JS of Unit 1; however the letter is not dated and as a result, JS was called as a witness and was affirmed. The following are the questions and answers provided by witness JS, (Witness JS) with Q representing the question and A representing the answers from the witness.

Questions by Landlord

Q: What's been going on?

A: I have an anxious dog and the tenant will bang on their roof upsetting another dog to cause barking and the tenant was throwing food down to my dog. About a month ago between 9:30 p.m. and 10:00 p.m. the tenant was yelling at the tenants above him. 10 minutes later he went upstairs and banged on the door of Unit 6 and I heard him yell "shut the fuck up".

Questions by Arbitrator

Q: Have you ever been threatened directly by the tenant?

A: No.

Q: Has the tenant ever pounded on your door?

A: No.

Cross-examination by Tenant

Q: How would you know about banging from the other side of the building?

A: Because you are that loud.

Q: How could I have banged on the door of Unit 6 a month ago when the tenant testified they have not seen me in one year?

A: I don't know what they said.

Witness dismissed.

The landlord stated that we can't talk to the tenant due to all the screaming and yelling. The landlord did not provide a list of 5 units as noted in the 1 Month Notice.

The tenant stated that there was yelling one time during a hockey game where they could not hear anything due to children making noise and dogs barking and that the dogs bark all day long between 70-90 barks per minute.

The parties disputed the amount the dogs bark above the tenant.

The landlord confirmed that the tenant has paid rent for June 2021. The effective vacancy date listed on the 1 Month Notice is April 30, 2021, which has passed.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice dated March 1, 2021, has an effective vacancy date of April 30, 2021. The tenant disputed the 1 Month Notice on March 5, 2021, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. I find that Witness JS contradicted the testimony of Witness LG as Witness JS claims that about a month ago (May 2021) the tenant went up to unit 6 and banged on their door and was yelling from below, yet Witness LG affirmed that they have not had any contact with the tenant for one year.

Based on the above, **I find** the landlord has provided contradictory evidence which is insufficient evidence to prove that the 1 Month Notice dated March 1, 2021 is valid. I also find that evicting someone based on contradictory evidence is not reasonable under the Act. Therefore, **I cancel** the 1 Month Notice dated March 1, 2021, as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee.

I ORDER a one-time rent reduction in the amount of **\$100.00** from the tenant's next monthly rent in full satisfaction of the tenant's recovery of the cost of the filing fee pursuant to section 62(3) and 72 of the Act.

Conclusion

The 1 Month Notice issued by the landlord dated March 1, 2021, is cancelled.

The 1 Month Notice is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction in the amount of \$100.00 from next month's rent in full satisfaction of the tenant's recovery of the cost of the filing fee.

This decision will be emailed to both parties.

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 15, 2021

Residential Tenancy Branch