



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENTS RUS PROPERTY MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 29, 2021 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent LH ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 77 minutes.

The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. The landlord stated that she also had permission to represent the owner of the rental unit.

Both parties intended to call one witness each at this hearing, but no witnesses testified. The landlord's witness was excluded from the outset of the hearing and was not recalled by the landlord to testify. The tenant's witness did not call into this hearing at any time.

At the outset of this hearing, I notified both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. The landlord and tenant both affirmed under oath that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they did not want to settle this application, they wanted to proceed with the hearing, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed that although English was not her first language, she did not require language translation services at this hearing, as she was able to properly understand and communicate in English.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on March 29, 2021, by way of registered mail. The landlord confirmed that the notice was served to the tenant on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on March 29, 2021.

At the end of this hearing, the tenant confirmed that she did not require the landlord to complete any repairs to the rental unit. The tenant did not provide any evidence regarding her claim for an order to restrict the landlord's right to enter the rental unit. Both these claims in the tenant's application are dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the tenant's minor 15-year-old daughter as a tenant-applicant and to correct the name of the landlord company. Both parties consented to these amendments during this hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2007. Monthly rent in the current amount of \$1,313.00 is payable on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$656.50 were paid by the tenant and the landlord continues to retain both deposits. The tenant continues to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice, with an effective date of April 30, 2021, for the following two reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *put the landlord's property at significant risk.*

The landlord testified regarding the following facts. The tenant asked for repairs. The plumber was already in the rental building. The landlord already gave notice to the tenant for repairs to be done. The landlord had a plumber replace the leaking and spraying taps in the kitchen at the rental unit. The tenant was shoving her phone in the landlord's face at this time. The tenant called the landlord "an f'ing b" and said that everyone in the building hates the landlord. The landlord left the rental unit and the tenant followed her to the door, calling the landlord names. The landlord told the owner about the above incident and the owner sent the tenant a letter, asking her to "cease and desist." The tenant was involved in a "brawl" before but was allowed to stay in the rental unit with a warning. The landlord has not returned to the rental unit because of this "abuse." The tenant sent letters from other people that were not true, and the

landlord will prove same. The tenant has been “horrible” to deal with, the landlord did not call the tenant’s 15-year-old daughter any names, and the landlord was not “drunk on the job.”

The tenant testified regarding the following facts. She went through the same process two years earlier. She was a witness at a previous RTB hearing for another tenant, one year ago, so the landlord is trying to retaliate. Other tenants have been “harassed” by the landlord. The landlord is putting pressure on the tenant because her rent is not high enough. The landlord knows how to put pressure and stress on people. The landlord wants the tenant to leave so the landlord can move into her rental unit because it has a nice view and so she can do renovations. There is mold in the rental unit that the tenant patched. The elevator does not work and the stairs cave in at the rental building.

The tenant stated the following facts. The tenant does not swear in English, usually only in French because English is not her first language. The landlord’s accusations are false. Neither the tenant nor the landlord swore, used bad words, yelled, or screamed at each other during the above incident. The tenant has only seen the landlord once this year when the landlord came to her rental unit for the above repairs. The tenant tried to show the landlord that she was supposed to come at 2:00 p.m. to complete the above repairs but the landlord showed up at 10:00 a.m., which is four hours early. The landlord wrote letters to intimidate the tenant’s witness. The landlord is putting pressure on the tenant’s friends and co-workers. The landlord called the tenant’s daughter a “bitch” when she is 15 years old. The tenant’s daughter heard the landlord whisper the above. The landlord is showing signs of “dementia.” The tenant does not feel safe in the rental unit and has called the police before.

The landlord stated the following in response to the tenant’s testimony. The tenant is making up “lies.” The landlord is 65 years old, so maybe she has dementia. The tenant is always trying to personally attack the landlord. The landlord has completed repairs to the rental building. The landlord does not want to move into the tenant’s rental unit, and she does not want to renovate it. The landlord does not get anything out of moving or renovating, it creates more work for her. The landlord is busy with renovations in the other rental buildings that she manages.

Analysis

The tenant was very upset and agitated throughout this hearing. She frequently spoke at the same time as me and argued with me, while I was trying to ask her questions about this application. The tenant was given ample time during this hearing to present her submissions and evidence. The tenant spoke for the majority of the hearing time, as compared to the landlord. The tenant was very upset when she could not locate the 1 Month Notice that is the subject of this application, as it took her over twenty minutes to do so.

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on March 29, 2021 and filed her application to dispute it on April 2, 2021. Accordingly, I find that the tenant's application was filed within the ten-day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord or put the landlord's property at significant risk.

Neither party indicated the date of the above repair incident. I do not find that verbal comments allegedly made by the tenant to the landlord on one occasion contributes to a pattern of behaviour. Therefore, I find that this one incident does not demonstrate *significant* interference, *unreasonable* disturbance, or *significant* risk.

Although the tenant referred to attending a previous RTB hearing in 2019 regarding a different 1 Month Notice about a separate incident, that was more than two years prior to this hearing date. The tenant also referred to a previous RTB hearing in 2020 when she was a witness for another tenant; this was more than one year prior to this hearing date. Therefore, I find the above events are too far removed in the past, to be considered a pattern of behaviour by the tenant.

Neither party identified further incidents since the 1 Month Notice was issued to the tenant. The tenant claimed that she only one interaction with the landlord this year, which was the above incident. The landlord claimed that she did not return to the rental unit after the above incident.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated March 29, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was only partially successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated March 29, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed without leave to reapply.

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: July 22, 2021

Residential Tenancy Branch