



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on August 5, 2021. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application, Notice of Hearing, and evidence sometime in April 2021, but could not recall when. I find the Tenant sufficiently served the Landlord with her application and evidence for the purposes of this proceeding.

The Landlord stated he served the Tenant with his evidence, in person, on July 30, 2021, 6 days before this hearing. The Landlord was asked why he waited so long to serve his evidence to the Tenant and stated that the situation has been difficult to manage, and many of the Tenants/witnesses were reluctant to submit their statements. I note the Landlord had nearly 4 months to submit his evidence to the Tenant, and he waited until 6 days before the hearing to provide his evidence to the Tenant. The Tenant stated that she has been dealing with the death of her daughter, and has had a tough time understanding and responding to the Landlord's evidence, since it was submitted so late.

As per Rule of Procedure 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the

hearing. I find the Landlord served his evidence 1 day late, and without any compelling reason why it could not have been provided sooner, given he had many months to prepare for the hearing. I find this late service is prejudicial to the Tenants and compromised the Tenant's ability to respond to the evidence. Given all of the above, I find the Landlord's documentary evidence is not admissible and will not be considered further.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenants' application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to

determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence in their packages.

The Tenant acknowledged receiving the Notice on March 31, 2021. The Landlord issued the Notice for the following reasons:

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.

Under the details of cause section on the Notice, the Landlord stated that on March 2, 2021, the Tenant entered another occupants suite and started yelling. The Landlord stated that after the Tenant was asked to leave, she became physical and pushed the other occupant.

During the hearing, the Landlord explained that the Tenant has a history of being disruptive to other residents in the building, but this Notice was issued due to a recent incident in March 2021. The Landlord explained that the Tenant went to her neighbour who lives across the hall and asked to use his phone. After being let in, and using the phone for some time, the Tenant's neighbour asked her to leave, and things became heated. The Landlord stated that the Tenant started yelling at this individual, after being asked to leave, and she eventually pushed him. The Landlord explained that the police were called, and others in the building wrote letters supporting that the Tenant often acts in this type of manner, hostile and aggressive.

The Landlord stated that the individual who let her in to use the phone is disabled, and vulnerable, and after this incident occurred, the Notice was issued. The Landlord loosely referred to a few other incidents that have occurred between when the Notice was issued, and the time of this hearing, and stated these issues were more examples of the Tenant's behavioural issues and the impact on other Tenants in the building.

The Tenant stated that the Landlord is trying to evict her because he does not like her. The Tenant stated that she is friends with her neighbour who lives across the hall, and she sees him almost daily, and has normal conversations with him. The Tenant specified that a few years ago, she actually went out of her way to help him when there was a situation where he needed assistance.

The Tenant stated that she is over at his rental unit all the time, so going over to ask to use his phone was not out of the norm. The Tenant denies that she pushed him or did anything aggressive towards him. The Tenant spoke to the 3 incidents since the Notice was issued where police were called, but stated that these were all trivial issues reported by another Tenant who wants her out of the building. The Tenant stated that others in the building will call the police when she is watering the flowers, using the outdoor hose, or using the common areas. The Tenant denies she has disrupted anyone, and feels there are a few people who are out to get her. The Tenant did not provide any documentary evidence in support of her statements.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on March 31, 2021.

Although the Landlord spoke loosely to the Tenant's history of negative interactions with others in the building both before the Notice was issued, and after, he did not articulate what the specifics were of these other incidents. The Landlord focused his testimony on the issue which happened on March 2, 2021, where the Landlord asserts the Tenant pushed another occupant in the building after using his phone. As such, this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that this issue gives the Landlord sufficient cause to end the tenancy under either of the grounds he selected on the Notice.

The Landlord provided witness statements, and evidence supporting the issues with the Tenant, including the incident in March 2021. However, as stated above, I find that documentary evidence is not admissible. The Landlord presented statements surrounding the Tenant's behaviour, both generally, and during the incident which precipitated the Notice in March 2021. However, I note the Tenant presented a very different version of events, and denies doing what the Landlord has asserted.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the Landlord bears the burden to prove there is sufficient evidence to end the tenancy under the selected grounds. I find the Landlord has failed to sufficiently demonstrate that the Tenant significantly interfered with or unreasonably disturbed others in the building, or that she seriously jeopardized the health and safety of another occupant or the Landlord.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on March 31, 2021, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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: August 6, 2021

Residential Tenancy Branch