



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MERRITT PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

On May 3, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a One Month Notice to End Tenancy for Cause dated April 26, 2021, ("the One Month Notice"). The Tenant also applied for an order for the Landlord to make repairs; to suspend or set conditions on the Landlords right of entry into the unit, and to recover the filing fee for the Application.

The Landlord's agents ("the Landlord") and the Tenant appeared at the hearing. The Tenant was assisted by his outreach worker. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

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

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the Landlord has sufficient cause to end the tenancy. The remainder of the Tenant's claims were dismissed with leave to reapply.

The Landlord testified that she sent a copy of her documentary evidence to the Tenant using registered mail sent on August 19, 2021. The Landlord testified that the mail was sent to the Tenant's address. The Landlord provided a copy of a registered mail receipt and tracking number as proof of service.

The Tenant testified that he has not been to the post office to pick up his mail.

I find that a party to a dispute cannot avoid service of documents by failing to pick up mail. I find that the Landlord served her documentary evidence in accordance with sections 89 and 90 of the Act. the Landlord's documents are deemed to have been received by the Tenant on August 24, 2021, the fifth day after it was mailed.

The Landlord's documentary evidence is accepted and will be considered.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on May 1, 2019 and is on a month-to-month basis. Rent in the amount of \$500.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$275.00. The Landlord stated that the rental property contains four commercial tenants and three residential tenants.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause ("the One Month Notice") in person on April 26, 2021. The One Month Notice has an effective date (the date the Tenant must move out) of May 31, 2021. The Landlord provided a copy of the One Month Notice following the conclusion of the hearing.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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*
- *Put the Landlord's property at significant risk*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on May 3, 2021 within the required time period.

The Landlord provided testimony on the reasons why the tenancy must end.

The Landlord stated that they have received a significant number of complaints about the Tenant from other occupants living on the residential property. The Landlord testified that she has received complaints from the two other tenants living on the property. The Landlord stated that the Tenant has disturbed others by placing his stereo facing out his window and playing loud music. The Landlord stated that the Tenant was given a written warning about the noise on February 22, 2021 and became upset and verbally aggressive with the Landlord.

The Landlord stated that the Tenant is harassing another Tenant by calling him inappropriate names such as pedophile and other worse names.

The Landlord stated that a contractor who is working to repair/ replace the Tenant's door was harassed by the Tenant.

The Landlord provided a timeline of the complaints that they have received about the Tenant. The Landlord provided a copy of a complaint the Landlord received from the Tenant's neighbor. The Landlord provided 18 video recordings in support of her testimony about the Tenant's poor behavior.

In response to the Landlord's testimony, the Tenant testified that workers on the property are related to his neighbor. He testified that after the complaint about noise he got rid of his music player and television. The Tenant stated that he lives quietly and keeps the noise down when asked.

The Tenant was asked whether he has harassed the other tenant by calling him inappropriate names and he replied that he never bothers him and he never calls him names.

The Tenant's advocate stated that the Tenant is hard of hearing and feels that he is being targeted by the other occupant living on the property. The advocate stated that he is struggling with mental health issues.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons for ending the tenancy in the Notice are valid. Based on the testimony and evidence of the parties and on a balance of probabilities, I make the following findings:

I have reviewed the Landlord's video evidence. I accept the Landlord's testimony that the recordings are of the Tenant. I find the behavior of the Tenant to be alarming and entirely inappropriate. The video recording dated December 19, 2020 the Tenant can be heard loudly screaming and acting inappropriate. The recording dated February 3, 2021, the Tenant can be heard calling the Tenant a pedophile and other inappropriate names. The other recordings contain additional inappropriate behavior. Despite the Tenant's affirmed testimony that he has not called the other Tenant inappropriate names I find that the Tenant has called the other Tenant inappropriate names on numerous occasions. I find that the Tenant's aggressive behavior amounts to harassment of the other tenant.

While I accept the statement from the Tenant's advocate that he is struggling with mental health issues, I find that the Tenant's behavior to be so poor that it cannot be justified.

I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The tenancy is ending.

The Tenant's application to cancel the One Month Notice is dismissed.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is granted an order of possession effective no later than 1:00 pm on September 30, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant and the Landlord.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated April 26, 2021, is not successful and is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on September 30, 2021, after service on the Tenant.

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: September 08, 2021

Residential Tenancy Branch