



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*.

The landlord, the tenant and the tenant's legal advocate (the "advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The advocate testified that the landlord was served with the tenant's application for dispute resolution on July 16, 2021 via registered mail. The landlord testified that the above package was received on July 16, 2021. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

The advocate testified that the landlord was served with the tenant's evidence package via email and registered mail on October 6, 2021. The landlord confirmed receipt of the email on October 6, 2021 and the registered mail package containing the same evidence, this morning. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, on October 6, 2021 via email because the landlord confirmed receipt on that date.

The landlord testified that he personally served the advocate's office with his evidence on September 27, 2021 and October 11, 2021. The advocate confirmed receipt of the landlord's evidence on September 27, 2021 and October 11, 2021. The advocate testified that she accepted the landlord's evidence on behalf of the tenant. I find that the landlord's evidence was sufficiently served on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the advocate accepted service on behalf of the tenant.

Preliminary Issue- Amendment

The landlord testified that the tenant spelled his last name incorrectly in this application for dispute resolution. In the hearing the landlord testified to the correct spelling of his name. Pursuant to section 64 of the *Act*, I amend the tenant's application to correctly spell the landlord's last name.

Issue to be Decided

Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and is currently ongoing. Monthly rent in the amount of \$650.00 is payable on the fifteenth day of each month. A security deposit of \$300.00 was paid by the tenant to the landlord. The subject rental building is a house comprised of four suites. The tenant rents one bedroom out of three bedrooms in one of the suites in the house.

Both parties agree that the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on June 19, 2021. The One Month Notice is dated June 19, 2021 and states that the tenant must move out of the

subject rental property by June 30, 2021. The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of cause section of the One Month Notice states:

Mainly verbally threatened other roommates. Repeatedly being a chronic drunk. Disrespect of other tenants well being.

The One Month Notice is the 2016 version.

The advocate submitted that the One Month Notice should be dismissed due to its many deficiencies which cumulatively create issues with procedural fairness. The advocate submitted that the *Act* requires the One Month Notice to be in the correct form and the landlord used the old form. The advocate submitted that the 2016 version of the One Month Notice is only two pages long and the 2021 version of the One Month Notice is three pages long. The advocate submitted that the information provided to the tenants on the 2016 version of the One Month Notice is different than the information provided on the 2021 version. The advocate submitted that the effective date of the One Month Notice is incorrect as only two weeks, and not the required one month was given.

The advocate submitted that in the details of cause section of the notice, the landlord is instructed to "include any dates, times, people or other information that says who, what, where and when caused the issue..." The advocate submitted that the details provided by the landlord in this section do not provide the requisite level of detail required for the tenant to properly respond to the landlord's claims. The advocate submitted that the landlord should have provided the dates of specific issues rather than accusations of being a "chronic drunk" which is inflammatory rather than informative language.

The landlord testified that the tenant was served with the One Month Notice because the tenant's roommate started texting the landlord in April of 2021 stating that the tenant is harassing him and eating his food. No text messages from April 2021 were entered into evidence.

The landlord testified that he tried not to get involved and to let the roommates figure it out but by May and June 2021 the tenant's roommate was still complaining to the landlord about the tenant's conduct. No text messages from May or June 2021 were entered into evidence.

The landlord testified that the tenant is an alcoholic who is violent when he is drunk. The landlord testified that he has overheard the tenant's former roommate complain about the tenant's drunk behaviour. The landlord testified that the tenant's former roommate currently lives in a different unit in the house. The landlord testified that the tenant choked his former roommate. The landlord entered into evidence a text message from the tenant's former roommate dated August 10, 2021 which states:

He's smacked me, choked me out once, verbal abuse over and over and over...all while drunk as a skunk.. a million things.
But it's my fault for vouching for him in the first place but he conned me into believing he would change.
Anyways he's dead to me. Fuck him.
I'm happy to know he's dead to me. Fuck him.
I'm happy to know he's on his way out.

The tenant testified that he got into an argument with his former roommate back in 2019 and that in the course of that argument he grabbed his former roommate by the neck and pinned him to the wall. The tenant testified that one or two days after the fight he and his former roommate were friends again and nothing further arose from the fight and the landlord was not informed. The tenant testified that the fight described above was an isolated incident and that while he does drink, he is not violent when he drinks. The tenant testified that he has never threatened his current roommate or been violent to his current roommate.

The tenant testified that prior to the incident that led to this eviction notice he had a good relationship with his roommate. The tenant testified that when his current roommate broke his leg he cooked and cleaned for the current tenant.

The advocate submitted that the good will and good relationship between the tenant and his roommate is evidenced by the current roommate's willingness to accept money transfers on behalf of the tenant. The advocate submitted that a third party sent money to the current roommate who would then give the money to the tenant. The tenant entered into evidence proof of said money transfers occurring in May 2021 and August to October 2021.

The tenant testified that the incident that led to the eviction notice occurred shortly before June 19, 2021. The tenant testified that he lent his current roommate \$30.00, and his roommate refused to pay it back. The tenant testified that he called his current roommate a piece of crap and wagged his finger in his face but never threatened or intimidated him. The tenant testified that after this argument his current roommate made up lies about him to the landlord which resulted in the landlord serving the tenant with the One Month Notice.

The tenant testified that the week after the above argument, the current roommate apologized and paid him back the \$30.00. The tenant testified that on June 23, 2021, when the tenant filed to dispute the One Month Notice the current roommate apologized to the tenant about the lies told to the landlord and told the tenant that he would write a letter of support for the tenant.

The tenant testified that the landlord did not attempt to speak to him about the accusations made by his current roommate and that he has never received a warning about his conduct. The above testimony was not disputed by the landlord. The advocate submitted that the current roommate alternates between telling the tenant that everything is ok to telling him he's going to be evicted. The landlord testified that the current roommate declined to provide testimony in this hearing.

The landlord testified that for the safety of the entire house the tenant must be evicted. The landlord testified that the tenant's current roommate wants to move out because of the conduct of the tenant but has not been able to find alternate living accommodation and is currently recovering from a broken ankle.

In support of the One Month Notice, the landlord entered into evidence the following text messages:

Date	Sender	Recipient	Message
July 30, 2021	Current roommate	LandlordI'm also giving you my 30 day notice. It's for varied reasons! [The tenant] has not been worse I just can't handle his being drunk most of the time. If I had known that I wouldn't have moved in. I'm a veteran like him to I have empathy for him. I've tried multiple times to go get the help he needs. I need to stay on top of my PTSD my mental health is not doing well in this environment that is a top priority for me! The filth is non stop. I've cleaned bathroom hall and kitchen 4X in the last and within days it's back to the original mess! I really like the house and the location! If you need the 30 day notice on paper let me know?!
August 1, 2021	Landlord	Current roommate	Just talked to [A.]. Looks like [the tenant] was screaming when he viewed the room!?
August 1, 2021	Current roommate	Landlord	Yes he was going on about how he doesn't want new people in the house again Not screaming yelling would be a better word
August 7, 2021	Current roommate	Landlord	Hey [landlord] I recant on my he seems to be ok. He came home last night drunker then usual. He decided to punch the walls really hard. I didn't question because I don't like talking to him when he's that drunk. I haven't said a word to him at all day. Do you want me acknowledge it to him. Or leave it up to you
August 19, 2021	Current roommate	Landlord	Hey sorry I didn't get back to you sooner. I meant some money to [the tenant] and he has been good at getting it back pronto. He has promised by the weekend now. I know not a smart move but like I said he has been good up until now. He is back with an old girlfriend she drinks heavily and does crac. [The tenant] has been up front about

			it. She is never here but [the tenant] attitude has slipped a little. Not trying to be a tattletale just keeping you posted...
September 9, 2021	Former roommate	Landlord	Anyways I don't really care. [The tenant] is still here, was yelling a lot last night calling his roommate a fucking asshole over and over so the whole house could hear. He was being blamed for eating his roommates food. That's why I kept all my food in my room, he gets drunk and wats everything then forgets he did it
October 6, 2021	Tenant in different unit in house	Landlord	I have a Noise complaint about [the tenant], he is once again going at it with [the current roommate] about this and that and being quite loud and disturbing

The landlord testified that the tenant is 6'2" to 6'3" in height and scares his current roommate when he drinks. The landlord testified that after the One Month Notice was served, the tenant's current roommate informed him that the tenant touched him in a sexually inappropriate way. The landlord entered into evidence an email exchange between the current roommate and the tenant's previous advocate dated August 16, 2021 and August 30, 2021:

- Previous advocate: I'm writing to you on behalf of your roommate, [the tenant]. I am a legal advocate at [redacted for privacy] and I am writing to see if you would be willing to write a letter in support of [the tenant]. The letter can include what your conflict with [the tenant] was about, how it was resolved, and your current roommate relationship with [the tenant]. This would be to support him in not being evicted. Please reply to this email if this is something you are able to do, and an advocate [redacted for privacy] will reach out to you to receive it.
- Current roommate: I like [the tenant] in many ways. But recent events have had me have 2nd thoughts. I'm not sure an honest reply may do more damage then help! [The tenant] was drunk or stoned or both... He touched me in a total inappropriate sexual way. I've asked a couple of people what should I do. They all advised me to write you and ask for your opinion. He is very sorry for the incident because I said it's a hard boundary. He seems to understand. Your advice?

The tenant testified that the incident described above occurred after the One Month Notice was served and was an accidental mistake. The tenant testified that the current roommate agreed to lend him money and so in thanks, he gave the current roommate a “man hug” from behind and patted the current tenant’s chest. The tenant testified that the current tenant, who is transitioning, immediately told him that the contact was inappropriate. The tenant testified that he immediately apologized and on reflection can see how that contact could feel inappropriate. The tenant testified that he did not mean for the contact to make the current roommate feel uncomfortable and was just trying to express his thanks.

The tenant testified that he keeps the common space of the subject rental property clean and always does his dishes and that it is the current roommate who is unclean. The tenant testified that he has never punched a wall at the subject rental property and that the current roommate is making this story up to try and evict him. The tenant testified that his current roommate has accused him of punching a wall when he has opened the freezer door. The tenant testified that he does not steal food from his current roommate. No evidence of wall damage was entered into evidence.

The advocate submitted that all the landlord’s evidence for this eviction is from events that occurred after the One Month Notice was issued. The advocate submitted that after the One Month Notice was served on the tenant the landlord started gathering evidence to retroactively support the One Month Notice. The advocate submitted that the landlord did not learn of the incident with the former roommate until after the One Month Notice was served as is evidenced by the former tenant’s text message from August 10, 2021.

The advocate submitted that the primary issue here is a conflict between two roommates, both of whom suffer from mental health concerns. The advocate submitted, in regard to the allegation of wall punching, no evidence of damage has been provided by the landlord because the tenant has not punched any walls and there is no damage.

Analysis

Section 47(1)(d)(i), section 47(1)(d)(ii) and section 47(1)(e) of the *Act* state:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

I note that in determining if the One Month Notice is valid, I can only take into consideration events known to the landlord that occurred up until the date the One Month Notice was served on the tenant. I must determine if, on the date the One Month Notice was served, the landlord had valid reasons for ending the tenancy. In this case, I can consider events that the landlord was aware of that occurred on or before June 19, 2021.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The landlord's evidence of the 2019 fight is a text message dated August 10, 2021, after the One Month Notice was served. I find, on a balance of probabilities, that the 2019 fight between the tenant and the former roommate was not known to the landlord at the time the One Month Notice was served on the tenant. I find that the landlord has not proved on a balance of probabilities that a fight that occurred two years ago with the

former tenant was a determining factor is serving the tenant with the One Month Notice. I note that it was not mentioned in the details of cause section of the One Month Notice. I accept the advocate's submissions that this evidence was canvassed after the One Month Notice was served in an attempt to support the One Month Notice.

The landlord testified that the current roommate complained about the tenant's conduct via text in the months before the One Month Notice was served; however, the referenced text messages were not entered into evidence. The tenant testified that in the months leading up to the service of the One Month Notice he got along well with the current roommate. I find that the landlord has not proved, on a balance of probabilities, that the current roommate complained about the tenant's conduct in the months before the One Month Notice was served.

Based on the testimony of both parties, I find that the incident with the current roommate involving the chest patting and hug occurred after the One Month Notice was served on the tenant and cannot be considered in this application. Similarly, the noise complaint against the tenant from the former roommate which occurred on September 9, 2021 is not eligible for consideration.

I find that the landlord has not provided corroborating evidence to prove, on a balance of probabilities, that as of June 19, 2021, he had reasonable cause to serve the tenant with the One Month Notice. All of the landlord's documentary evidence pertains to events that occurred after the One Month Notice was served, with the exception of the 2019 fight with the former roommate. I find, on a balance of probabilities, that the landlord was not aware of this fight at the time the One Month Notice was served because the tenant testified that the landlord was never made aware of it at the time, because the text message detailing the incident from the former tenant is dated August 10, 2021, after the One Month Notice was served on the tenant and because it was not mentioned on the One Month Notice in the details of cause section. As the landlord has not met the required burden of proof, I find that the One Month Notice is of no force or effect. This tenancy will continue on in accordance with the *Act*.

As I have already determined that the One Month Notice is of no force or effect, I decline to determine the merits of the advocate's submissions regarding the procedural fairness of the One Month Notice itself.

Conclusion

The One Month Notice is cancelled and of no force or effect.

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: October 22, 2021

Residential Tenancy Branch