



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion & Estates and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated June 30, 2021 (the One Month Notice); and
- an order to recover the filing fee.

One of the Tenants attended the hearing; they and the Landlord were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; both were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they did not serve their Notice of Dispute Resolution Proceeding and evidence (a copy of the One Month Notice) on the Landlord. I find the Landlord was not served in accordance with the Act. The Landlord indicated they learned of the hearing by contacting the Residential Tenancy Branch in July or August. As the Landlord was in attendance, prepared, and willing to proceed, I continued the hearing. The Landlord did not submit any documentary evidence in response to the Tenants' application.

Issues to be Decided

Are the Tenants entitled to an order to cancel the One Month Notice?
If not, is the Landlord entitled to an order of possession?
Are the Tenants entitled to the filing fee?

Background and Evidence

The Tenant and Landlord agreed on the following regarding the tenancy. It began April 1, 2021; rent is \$1975.00, due on the first of the month; and the Tenants paid a security deposit of \$987.50 and a pet deposit of \$400.00, which the Landlord still holds.

The Tenants submitted a copy of the One Month Notice as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the reasons for ending the tenancy, and is in the approved form. I note the One Month Notice does not state an effective date. The One Month Notice indicates the tenancy is ending because 1) the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the landlord; and 2) the Tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The Landlord testified that in early April, 2021, they were approached by two separate tenants, each of whom stated it appeared the Tenant was involved in “drug activity.” The Landlord testified that on April 11, 2021, they reviewed images from surveillance cameras at the residential property, and noticed the Tenant leaving by the rear lane fire door at “all hours of the evening and morning,” and entering through the front door. The Landlord explained that as entry to the property is via a fob, they have the ability to review tenants’ movements.

Having looked at a one-week fob record, the Landlord found the Tenant was frequently exiting and entering the property. The Landlord testified the Tenant exited and re-entered the residential property as many as 30 times in one evening, as noted below:

Date	Number of times Tenant exited & entered property within 24 hours
April 14	14
April 15	20
April 16	20
April 17	11
April 18	15
April 19	11
April 20	23
April 21	30

The Landlord testified that the majority of the Tenant's activity began around 10:00 p.m., increased into the "wee hours," then tapered off around the time other tenants were about to start leaving the property in the morning.

In response to my question to the Tenant about their frequent movement in and out of the building, the Tenant explained they are a heavy smoker, and as their spouse strenuously objects to their smoking, when their spouse is home, the Tenant goes outside to smoke, sometimes 20 to 30 times a day.

The Landlord testified they were a former police officer, and had previously investigated drug crimes. The Landlord testified they spoke with a police constable about the matter, and that the constable was familiar with the Tenant, in a context not discussed in the hearing. The Landlord testified the constable instructed the Landlord to email them a statement of observations, the fob entry log, and pictures from the property's video surveillance. The Landlord testified there were three pictures in particular that looked to them and to the constable to be drug transactions. The Landlord testified the constable approached a judge to obtain a production order, to allow the police to proceed with further investigation.

The Landlord testified they were challenged trying to deal with tenants complaining about the situation and the Landlord's apparent inaction, as the Landlord was not able to tell the tenants about the police investigation.

The Landlord testified that in May 2021, the constable sought police resources to surveil the Tenant's activities. The Landlord testified the police tried to surveil the Tenant on a couple of nights, but it "did not come to fruition." The Landlord explained that at that time the decision was made by the corporate Landlord to serve the Tenant with the One Month Notice.

The Landlord testified that after serving the Tenant with the One Month Notice, they and their spouse received a series of texts from the Tenant, suggesting they contact specific police "higher ups," who would give the Tenant a good character reference. The Landlord testified that when they asked the Tenant if they were a confidential police informant, the Tenant did not reply, and stopped texting.

The Landlord testified that as, in their experience, police take people in the drug trade and "turn them," the Landlord realized that using the police department would not help "solve the issue." The Landlord testified they discussed the matter with the Tenant, and

that as the Tenant said they “won’t do it anymore in the building,” there was a “mutual de-escalation.”

The Tenant testified that they and the Landlord had a conversation “a long time ago” in which the Tenant told the Landlord they “won’t do it in the building,” as they sought to “go along with” what the Landlord was saying, and tell the Landlord what the Landlord wanted to hear.

The Tenant testified that he met a couple police officers when he was mistakenly arrested for a theft. The Tenant testified that someone dressed similarly to him had stolen something from a police car, and that when the police realized the error, an officer gave the Tenant his business card, and that the officer and the Tenant now talk sometimes.

The Tenant described how they “talk to lots of people,” and hand out money, food, and cigarettes. The Tenant testified that in doing so, they sometimes learn information about crimes, which they pass on to the police.

The Tenant testified that the Landlord said they were drawing a map of where the Tenant goes; the Tenant stated that the Landlord’s spouse is watching them. The Tenant also stated that the Landlord and their spouse follow the Tenant.

The Tenant testified that they are polite and respectful to their neighbours in the residential property.

In response to testimony from the Landlord that the Tenant sometimes lets homeless people into the building, the Tenant described two instances in which he invited guests into the building, who each visited for a time, then left. The Tenant testified that both visitors were the Tenant’s family members, one homeless and one not, and that the Tenant would never bring someone into the building they did not trust.

The Landlord testified that they had reviewed video surveillance, observing that, in the first of the two instances, the Tenant came into the building with a person who appeared homeless, who stayed in the building for about six minutes, then left unescorted. The Landlord testified it looked like a drug deal. The Landlord further testified that, in the second instance, the person entering the building looked like a street person, was in the building for about seven or eight minutes, then came down by themselves, carrying a pizza box.

The Tenant testified that while they were meeting someone in the lobby of the property to complete a Facebook Marketplace sale, the Landlord contacted the Tenant, telling the Tenant they were being watched by the Landlord. The Tenant testified they are being harassed by the Landlord, and that the Landlord has become obsessed with watching the Tenant.

The Tenant testified they have been employed by the same business for 10 years and did not lie on their application to reside in the residential property.

The Landlord did not provide testimony regarding the second reason indicated on the One Month Notice for ending the tenancy, that the Tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice if a tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord; or, the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit. Section 47 specifies:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Based on the evidence before me, and on a balance of probabilities, I make the following findings.

I find that the Landlord served the Tenant the One Month Notice in person on June 30, 2021, the day the Tenant received it. I find the One Month Notice served in accordance with section 88 of the Act. I note that the One Month Notice does not state an effective date. However, as the Notice is dated, I find that, in accordance with section 68 of the Act, I am satisfied the Tenant would have realized that the Landlord's intention was for the Tenant to vacate the rental unit one month from the date they received the One Month Notice. Otherwise, I find the One Month Notice meets the form and content requirements of section 52 of the Act.

When a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove the reasons for the notice. In this case, the Landlord has provided evidence that demonstrates the Tenant may be engaging in illegal activity. However, the Landlord has not provided testimony or documentary evidence to demonstrate, if the Tenant *is* engaging in illegal activities, these activities have, or are likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the Landlord. In their testimony, the Landlord mentioned complaints from other tenants about the activities of the Tenant, but the Landlord did not testify on or demonstrate how other tenants are being impacted, or may be impacted, and the Landlord did not call witnesses or provide written evidence to support their argument.

As noted above, the Landlord did not provide testimony or documentary evidence regarding the second reason indicated on the One Month Notice.

While, from this hearing, I cannot determine whether the Tenant is engaging in illegal activity, I find with certainty that the Landlord has failed to prove either of the reasons for the One Month Notice.

Therefore, I find the Tenants are entitled to an order to cancel the One Month Notice; the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants are successful in their application, I order the Landlord to pay the \$100.00 filing fee the Tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenants' application is granted.

The One Month 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: November 12, 2021

Residential Tenancy Branch