



Dispute Resolution Services

Page: 1

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

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and both parties were accompanied by Legal Counsel. The landlord's agent and the tenant each gave affirmed testimony and the tenant called 2 witnesses who gave independent affirmed testimony. The parties, or their legal representatives were given the opportunity to question each other and the witnesses, and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent (hereafter called the landlord) testified that this fixed-term tenancy began on May 1, 2017 and reverted to a month-to-month tenancy after April 30, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,995.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$975.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlord. The rental unit is an apartment unit in a complex, and the landlord also resides in the complex.

The landlord further testified that on June 30, 2021 the landlord served a One Month Notice to End Tenancy for Cause by handing it to a roommate of the tenant. A copy has been provided for this hearing, and it is dated June 29, 2021 and contains an effective date of vacancy of July 31, 2021. The reasons for issuing it state:

- 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.

The landlord has received written complaints from a few tenants about a smell of marihuana from the rental unit, and copies have been provided for this hearing. One of the neighbours addressed a letter to the previous property manager, and that person moved out due to the smell. Another states that the neighbour is bothered by the smell and indicates that the tenant smokes it 3 times per day on a daily basis. The landlord did not talk to the tenant about cannabis use or provide any of the letters to the tenant.

The landlord also testified that a roommate of the tenant contacted the landlord early in the morning due to a water emergency, and the repair was done by 6:00 a.m. However, the tenant also complained that the washer was not functioning. When tenants have problems with broken drums it means that there is too much weight in the loads which caused damage to the drums. That cannot be repaired, and a new one has to be purchased.

The landlord could not deliver a new washer right away due to the Pandemic. The landlord's agents worked as fast as they could but the tenant was not happy with that and called the landlord a few times, calling the landlord incompetent and said the landlord had no idea what the landlord was doing. The landlord called the head office of the landlord and sent an email to the tenant about his behaviour and attitude toward the landlord.

The landlord has provided a copy of a letter which was sent to the tenant dated January 14, 2021 indicating that the washer/dryer combination in each suite is not meant for heavy duty or large loads, and failing that, the drum in the washers break. It also states that the landlord would replace the washer without charge to the tenant provided that

the tenant sign a memo provided previously, but if the tenant didn't sign, a used washer would be provided as soon as possible, and to direct any concerns or issues to the resident managers in a respectful manner. The landlord testified that the letter did not change the tenant's attitude toward the landlord.

On June 29, 2021 the tenant called the landlord, and considering the way he spoke and what the tenant was saying the landlord recorded the calls. Two recordings have been provided for this hearing, which were played during the hearing.

Another letter has also been provided for this hearing, dated June 29, 2021 sent to the tenant regarding conduct, and disrespectful and unacceptable behaviour towards management. The landlord testified that the tenant had been sending text messages to the landlord prior to that, and after the letter was sent, the tenant's behaviour didn't stop. On July 20, 2021 the landlord received about 6 calls from the tenant cursing and threatening. It is emotional for the landlord even today, and the landlord doesn't feel safe at home or at work and always asks someone to be present when the landlord is in the office. The landlord is afraid of the tenant and avoids going close to the rental unit. The recording has the tenant saying words to the effect: "I'm coming down and have it out." The landlord was shaking, nervous, anxious and felt unsafe. The landlord called the non-emergency number for the landlord company because the landlord wasn't sure what was going to happen to her.

The tenant testified that he has not received any complaints about cannabis, and others in the building use cannabis.

In mid-November, 2020 the tenant called the previous manager of the landlord who informed the tenant there was a new manager and gave the tenant a phone number. The tenant called that number about the washer making a loud thumping sound and was requested to stop using it and the landlord would call a repair person, but there were 2 people ahead of the tenant.

A week or so later a truck was unloading washers and dryers and the tenant assumed his was next. He called the landlord who said it would be delivered soon. Awhile later another washer and dryer were being unloaded and the tenant called the landlord again. There are 2 people residing in the rental unit who work in construction and need to do at least 1 load per day, but the landlord said the washer was not for his unit, and told the tenant that he had to sign a paper about warranty and they wouldn't get one till he signed that paper.

There are not a lot of laundromats in the community and they are very busy. The tenants were at the laundromat for 5 hours. The tenant called the landlord who was rude and belligerent and the tenant got the impression that the landlord didn't care and the tenant wouldn't get a washer until he signed the paper. The tenant asked for a phone number of the landlord's supervisor, but the landlord said there wasn't one.

A week or so later the tenant made contact again about the washer again asking to speak to a supervisor, but the landlord refused to provide a number and the tenant advised that he would get a lawyer.

Even back in December, the tenant raised an issue about the kitchen sink handle, but the landlord had excuses and she'd get to it when she felt like it, assumingly because the tenant wouldn't sign the paper, and nothing has been done to the sink.

The landlord also ignored 2 of the tenant's calls when at 5:00 a.m. a tap in the bathtub broke and hot water was coming out faster than the tenants could deal with it. A roommate called the landlord and the landlord and another person joked about it not being big deal.

Further, in June the kitchen tap came off in the tenant's hand. The tenant was frustrated; the landlord deliberately held up repairs.

Since the phone calls on June 29, 2021 the tenant has not called or texted the landlord. However the landlord called the tenant at work about the sink and was lying and deflecting. The tenant got frustrated and requested that the landlord never call the tenant again. The tenant tried to be patient, but 5 minutes later the landlord called the tenant again at work, who was at a customer's home, and nothing was accomplished.

The washer was replaced on January 18 which was 2 months later, after the tenant threatened to call the landlord's boss. The tenant did not threaten injury, just to talk about it, and the tenant disputes that the landlord is afraid; she's walked past the tenant's rental unit several times with her dog. The landlord was rude, would push buttons and pretty much told the tenant that she would get to it when she felt like it. It also took 2 months to get an additional building fob. About the 6th time that the tenant requested it, the landlord treated the tenant in that manner, but not the roommate. The same happened when there was an emergency, clearly ignoring the tenant and the tenant's concerns.

The tenant's first witness testified that she moved into the rental unit with the tenant almost 2 years ago in April. It took about a year and a half to get a building fob; the

tenant had asked for it when the witness first moved in. The witness denies getting a text message from the landlord saying to retrieve it in 15 minutes, but testified that the landlord said that she wasn't ready and to return in a few days.

The tenant is a very kind, calm and sweet person and has never, ever been rude.

The tenant's second witness (MD) testified that he is the tenant's roommate and has known the tenant for about 7 years. The tenant has been very calm, and it was out of character for him to be rude.

The witness also testified that the tenant contacted the landlord about 5:20 a.m. about the shower and by 6:00 a.m. there were people there fixing it.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant was told about delays in delivery of appliances, which should not have been a surprise; it's been on the news that supply chains were interrupted. When the shower incident happened the witness also testified that they called the landlord at 5:20 a.m. on the landlord's personal phone and by 6:00 a.m. someone was there and it was fixed. The other witness testified that it took a long time to get a building fob, but that's not true. The response from the landlord was within 8 minutes, so that was either forgotten or intentionally misleading. She didn't have enough money when she went to get it. The witness was given a fob that day within minutes even though the witness was short \$5.00 to pay for it.

The reason for this hearing is the belligerent attitude and threats to the landlord. Witnesses say he's a nice guy but we've heard the tapes. No resident manager should have to put up with it, now he says he wasn't going to hurt her. "I'll come down and we'll have it out now." The landlord's letter to the tenant on January 14, 2021 saying his behaviour was not acceptable didn't stop him. To say that the tenant polite and the landlord is not, is not credible. The landlord has said she can't live or work there while he's there. There is no reason for a resident manager to put up with abusive language and threats. The One Month Notice to End Tenancy for Cause should be upheld.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The Details of Even(s) section of the One Month Notice to End Tenancy for Cause says that the main reason for issuing it due to "the frequent strong smell of Cannabis." The description covers phone calls but the last sentence says that cannabis is the main reason. The landlord relies on both the cannabis use and recordings.

Legal Counsel for the tenant has provided a copy of a Decision of the Residential Tenancy Branch with the evidence, which states that the tenant in that case didn't receive anything in writing from the landlord to warn that the tenancy was in jeopardy.

Going forward, the same applies, that might be a case to do so. The landlord's personal cell was the only contact that the tenant had. The tenant was frustrated on June 29, 2021 and called the landlord, and was rude, but the tenant is sorry and hasn't spoken to the landlord since; other roommates can deal with the landlord.

Ending the tenancy is out of proportion for the incidents and would not follow previous Decisions of the Residential Tenancy Branch.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I agree with Legal Counsel for the tenant that the Details of Cause section of the Notice states that the main reason for issuing it is the tenant's use of cannabis. That is not even remotely a reason for issuing it. The only evidence that the tenant has ever been told, verbally or in writing that cannabis use has been any problem in the rental complex was perhaps a conversation with a previous building manager, but there's nothing to substantiate that. However, the letter provided to the tenant by the president of the landlord company dated June 29, 2021, the same date as the notice to end the tenancy was issued, states that due to the continued and unacceptable behaviour of the tenant, the landlord had no alternative but to issue the notice to end the tenancy.

The evidence shows that the president of the landlord company provided a letter to the tenant dated January 14, 2021 stating, among other things, that any concerns or issues the tenant may have had were to be directed solely to managers in a respectful manner.

Other incidents also occurred however the recordings speak for themselves, wherein the tenant calls the landlord incompetent, useless and lazy. What's most disturbing is: "You either got today, tomorrow or I'm coming down to the f... office and I'll tell you we'll have it out right in the middle of this f... building." I agree with Legal Counsel for the landlord that

the recordings are threatening. I find that the tenant has unreasonably disturbed the landlord and the landlord had cause to issue the Notice.

The tenant's application to cancel the Notice is dismissed.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 13, 2021

Residential Tenancy Branch