



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY
(1974) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant attended the hearing with a legal advocate, GC. The landlord was represented at the hearing by a director, AS ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and evidence; the tenant acknowledged service of the landlord's evidence. Both parties stated they had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Preliminary Issue

At the commencement of the hearing, I inquired whether the landlord's name was exactly as stated in the notice to end tenancy. The landlord confirmed this. The tenant's advocate sought to amend the tenant's application to reflect the landlord's name as shown on the notice to end tenancy. In accordance with section 64(3) of the

Act, the landlord's name was amended to the one shown on the cover page of this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that the onus of proof in this case falls upon the landlord in accordance with rule 6.6 of the Residential Tenancy Branch rules of procedure. The landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy. I also stated that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the tenancy began on May 1, 2008. Rent is set at \$375.00 per month, payable on the first day of each month.

On June 23, 2021, the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the tenant's door. A copy of the notice to end tenancy was provided as evidence. The single reason for ending the tenancy states:

The tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord gave the following testimony. On several occasions, the tenant has threatened the staff at the residential facility. He has used abusive language. There have been times when maintenance staff had to go in and fix things or provide services to the tenant in his unit and the tenant became abusive at them by yelling and being uncooperative.

The landlord states the incidents are listed in pages 11 to 60 of his evidence package however the landlord did not refer me to any specific pages in the package for me review.

The landlord gave two incidents of significant interference or unreasonably disturbing the landlord or another occupant during testimony. The first incident, on March 5, 2021 involves the tenant leaving a voicemail on the landlord's line whereby he shouted and swore on the phone. The tenant wanted other occupants to wear masks during the pandemic. The second incident involves the tenant leaving a voicemail on the landlord's line on November 9, 2020. The tenant was heard swearing. The landlord testified that this happens a lot and that the tenant constantly uses abusive language and foul words. The landlord did not provide any audio recordings of the voicemails as evidence in these proceedings.

The tenant's advocate gave the following submissions. The building is fairly large, at 11 stories. The landlord provides support and housing for people with mental illness, which has fallen short during the pandemic. This has happened throughout the buildings run by the landlord. Mental health offices have closed, leaving those with mental health issues without resources. Mental supports once there, are now taken away.

The tenant takes responsibility to the issues raised by the landlord. The tenant tends to speak loudly, partially due to his anxiety. Sometimes the loud talking sounds like yelling when it is unintentional. The tenant has seen a doctor and started taking anti-anxiety medication which helps in reducing his anxiety.

The tenant's advocate states there are 2 aggravating factors for the tenant's behaviour. First, the tenant was assaulted with a knife by another resident in the building on March 24, 2021. A copy of that resident's probation order was provided as evidence. It includes a no-contact order with the tenant and a restriction from attending on the tenant's floor of the building where they both continue to reside. The tenant's anxiety and fear is heightened due to the aggressor continuing to live in the building and a copy of the tenant's victim impact statement was referred to by the tenant's advocate.

The second aggravating factor is that the issue that the landlord did not take the rent money out of the tenant's chequing account for 3 weeks after it was due. The tenant is low income and having the \$375.00 in his account not deducted by the landlord causes him anxiety. His phone calls to the landlord are in frustration with not taking the money out.

The tenant testified that police officers came to his door a week before the landlord served him with the notice to end tenancy, telling him to "cool it". From then on, he understood his tenancy might be in jeopardy and he has since changed his behaviour.

There have been no incidents with staff or other tenants since the encounter with the police.

Analysis

The landlord is deemed to have served the tenant with the One Month Notice to End Tenancy for Cause on June 26, 2021, three days after it was posted to the tenant's door in accordance with sections 88 and 90 of the *Act*. The tenant filed an application to dispute the notice on July 2, 2021 within 10 days.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that:

The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In determining this dispute, I must consider what is a “significant” interference or “unreasonable” disturbance to the landlord or other occupants. The *Residential Tenancy Act* has used this strong wording to ensure that landlords can only end the tenancy if the issues with the tenant are significant, unreasonable, and/or serious. I accept the tenant’s advocate’s submission that the building houses residents with mental health issues that require additional support, not regularly available in a regular housing facility. I also accept the tenant’s submissions that mental health supports were reduced during the pandemic when the tenant’s needs were greatest.

As such, a reasonable person would expect the landlord to show some tolerance for foul language from a tenant suffering from mental health issues. The incidents of “significant” interferences or “unreasonable” disturbances to the landlord are not “significant” or “unreasonable” given the circumstances. Using foul language on voice mails and a vague reference to the tenant verbally abusing staff or contractors hired to do work on his unit are not sufficient cause to end a tenancy.

During the hearing, I twice asked the landlord to give me specific details of a significant interference or an unreasonable disturbance to other occupants or the landlord. In response, the landlord provided two examples of voice mails left on the landlord's phone described by the landlord as either abusive or foul. The landlord did not provide an audio recording of the voicemails for me to hear. The landlord also stated the tenant was similarly abusive to people attending at the tenant's unit to do repairs but didn't provide any details such as dates and times or the nature of what was said or done.

No details of other events or incidents were presented to me during testimony, although the landlord had the full opportunity to provide me with such evidence. The landlord did not specifically direct my attention to any documentary evidence, other than telling me it's all there in pages 11 to 60 of his evidence. As I advised the parties at the commencement of the hearing, the onus to prove their case falls upon the landlord and that the landlord must provide me with the specifics of their reasons in order to succeed. I find that the landlord provided insufficient evidence to satisfy me the landlord had cause to end the tenancy for the reasons provided on the notice to end tenancy. As such, the notice to end tenancy issued on June 23, 2021 is cancelled.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, the tenant may reduce a single rent payment due to the landlord by \$100.00.

Conclusion

The notice to end tenancy is cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

This decision is final and binding on the parties.

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 01, 2021

Residential Tenancy Branch