



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTERA PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 28, 2021 (the “Application”). The Tenant applied as follows:

- For an Order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a One Month Notice to End Tenancy for Cause dated July 24, 2021 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with V.V. to assist. The Agent for the Landlord (the “Agent”) appeared at the hearing with their supervisor and a witness. The witness was not involved in the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the end of the hearing, I heard the Agent on the relevance of the witness and it was determined that it was not necessary to call the witness.

At the end of the hearing, I heard the Tenant on the relevance of calling V.V. as a witness. The Tenant stated that they wanted to call V.V. as a witness in relation to the “provoking” behaviour of the tenant above them. I told the Tenant I do not find the upstairs tenant’s behaviour relevant to the issue before me because poor behaviour by the upstairs tenant does not entitle the Tenant to behave poorly, which is what the Landlord is alleging as one of the reasons for the Notice. Further, the Tenant had

denied that they had behaved poorly in relation to the upstairs tenant and therefore I did not see the relevance of hearing about the “provoking” behaviour of the upstairs tenant. In the circumstances, I did not hear from V.V. as a witness.

Pursuant to rule 2.3 of the Rules, I told the Tenant I would consider the dispute of the Notice and request for the filing fee and dismiss the request for an Order that the Landlord comply with the Act, regulation and/or the tenancy agreement with leave to re-apply. The request for an Order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

I note that both the Tenant and the Agent had to be told during the hearing to stop scoffing at each other’s testimony and that if they continued to do so, they would be muted.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started May 01, 2021 and is for a fixed term ending April 30, 2022. Rent is \$1,100.00 per month due on or before the first day of each month. The Tenant paid a \$550.00 security deposit and \$550.00 pet damage deposit. The agreement states at term 49 “no smoking”.

The Landlord submitted a Pet Authorization Agreement stating that the Tenant is only to have a “Himalayan ragdoll” cat in the rental unit. The agreement states, “No other pets are permitted in the tenant’s rental unit at any time, whether owned by the tenant or a guest of the tenant.”

The Notice was submitted. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Agent. The Notice has an effective date of August 31, 2021. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the Tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
 - c. Put the Landlord’s property at significant risk.

The details of cause on the Notice outline the following issues:

- Smoking on the building property
- Having an unauthorized puppy
- Approaching the manager and their son after work hours and Tenant’s visitor becoming very angry using vulgar language
- Tenant harassing upstairs neighbour
- Police attending due to Tenant
- Cutting hedges

The Tenant did not raise an issue with the form or content of the Notice when asked.

The parties agreed the Notice was served, and received by the Tenant, July 24, 2021.

In relation to smoking, the Agent testified as follows. The Tenant has constantly been smoking on the property since they moved in which has interfered with the upstairs tenant. The upstairs tenant asked the Tenant to stop smoking and the Agent witnessed the Tenant swearing and giving the upstairs tenant “the finger”. The Tenant and their daughter have been giving the upstairs tenant “the finger” and making things

uncomfortable. The Agent has attended the rental unit and smelled smoke in the rental unit. The Agent has witnessed the Tenant and their guests smoking on the property on several occasions.

In relation to the puppy, the Agent testified as follows. They received a phone call about the Tenant having a puppy in the rental unit and witnessed the puppy in the window of the rental unit. The Tenant has had the puppy on the property multiple times.

In relation to the Tenant's behaviour, the Agent testified about an incident when the Tenant and their daughter approached the Agent after work hours and the Tenant's daughter swore at the Agent.

In relation to harassing the upstairs tenant, the Agent testified that they have witnessed the Tenant giving the upstairs tenant "the finger", swearing at the upstairs tenant and staring into the upstairs tenant's windows.

The Agent testified about an incident when police attended the rental unit further to a call from another tenant because the Tenant was outside intoxicated and screaming.

The Agent testified about the Tenant cutting hedges on the common property of the building.

In relation to smoking, the Tenant denied ever smoking in the rental unit. The Tenant testified that they do not recall ever smoking on the property.

In relation to the puppy, the Tenant testified that it is a therapy puppy for their daughter and it has never stayed at the rental unit. The Tenant testified that the puppy was on the grass at the rental unit the day they purchased the puppy but otherwise it has not been at the rental unit.

In relation to the Tenant's behaviour, the Tenant testified that the incident with them and their daughter approaching the Agent occurred at a time when their daughter was upset and on medication for a serious illness. The Tenant testified that they later apologized to the Agent. The Tenant testified that their daughter did not use vulgar language towards the Agent.

In relation to harassing the upstairs tenant, the Tenant testified as follows. They cannot stare into the upstairs tenant's windows because the upstairs tenant is on the second

floor. In relation to the Agent's testimony, the Agent could only see the Tenant's reaction to the upstairs tenant and could not see that the upstairs tenant was being abusive to the Tenant. The upstairs tenant was provoking them. They did not swear, give the "finger" to or stare at the upstairs tenant.

In relation to the police attendance, the Tenant acknowledged they were intoxicated and stated that they simply needed someone to assist them and were not doing anything illegal.

The Tenant denied they damaged a hedge on the common property of the building.

The Agent sought an Order of Possession effective December 31, 2021.

The Landlord submitted the following relevant documentary evidence:

- A note dated May 04, 2021 from the Agent about witnessing the Tenant verbally harassing a visitor of the upstairs tenant. The visitor was asking the Tenant to take the smoking somewhere else. The Tenant screamed obscenities at the visitor.
- A Caution Notice to Tenant dated May 05, 2021 about smoking on the property which has interfered with two units above the Tenant. The notice asks that the Tenant not have contact with the upstairs tenant. The notice states that the Agent heard cursing and screaming and saw the Tenant verbally abusing the upstairs tenant.
- A letter received May 05, 2021 from the upstairs tenant about the Tenant and their guests drinking and smoking on the property and the upstairs tenant having to close all their windows. The letter states that the Tenant yelled at a visitor of the upstairs tenant when they asked the Tenant to stop smoking.
- A Caution Notice to Tenant dated July 06, 2021 about smoking on the property, a puppy being in the rental unit and the Tenant cutting hedges.
- A note by the Agent about July 06, 2021 when the Tenant and their daughter approached the Agent and their son and the Tenant's daughter swore at the Agent. The note states that the Agent received a phone call from another tenant about the Tenant and another individual standing outside yelling.

- A letter from another tenant of the building dated July 07, 2021 about the Tenant smoking on the property and having a puppy.
- A letter from the upstairs tenant's mother about the upstairs tenant being stressed due to the Tenant smoking on the property, harassing the upstairs tenant, yelling, swearing and stalking the upstairs tenant. The letter states that the upstairs tenant's mother has observed the Tenant and another woman "glare her down" in relation to the upstairs tenant. The letter states that the upstairs tenant's mother has observed the Tenant smoking on the property.
- A note dated September 22, 2021 from the Agent about receiving a phone call from a tenant about why there is a puppy in the rental unit and attending the rental unit to see the puppy back at the unit. The note states that the Agent is concerned and nervous to approach the Tenant.
- A Caution Notice to Tenant dated September 24, 2021 about smoking on the property and having a puppy in the rental unit.
- An email dated September 24, 2021 from a relative of the upstairs tenant about the Tenant smoking and terrorizing the upstairs tenant. The email states that the relative has observed the upstairs tenant's emotional state deteriorate and has observed the upstairs tenant close to tears and shaking when they pick up the upstairs tenant from the building.
- A letter from the upstairs tenant stating the following about the Tenant. The situation with the Tenant has gotten worse. The Tenant continues to smoke. The Tenant is abusive towards the upstairs tenant and is harassing them. They are uncomfortable in their own home. They have stopped using their deck because of the Tenant. The Tenant has yelled at the upstairs tenant when they were out on their deck. They heard screaming one day and observed the "younger lady" yelling at the Agent. The Tenant has given the upstairs tenant "the finger". They feel uncomfortable at the building.
- A letter from a friend of the upstairs tenant from September 24, 2021. The letter states that the Tenant has been harassing the upstairs tenant. The letter states that they smell smoke every time they attend the upstairs tenant's unit. The letter states that they can hear the Tenant yelling insults at the upstairs tenant. The

letter states that the Tenant stares, makes rude gestures, yells and swears at the upstairs tenant.

The Tenant submitted the following relevant documentary evidence:

- A letter from the Tenant's sister. The letter states that the Tenant does smoke but has made the appropriate adjustments to avoid bothering others with the smoking. The letter states that the Tenant's daughter has been staying with the Tenant and that this is a temporary situation until their daughter is able to care for themselves. The letter states that the puppy "is an adorable and utterly harmless source of comfort to" the Tenant's daughter. The letter states that the Tenant's daughter "did use harsh language" but had been "under the influence of extremely strong pain medications".
- Notepad documents which I understand to be statements written by the Tenant. The Tenant states that the upstairs tenant is a friend of the Agent's and that they have been harassing the Tenant. The Tenant states that they assume the upstairs tenant has someone in mind who needs a unit to rent. The Tenant states that their daughter was angry and did use harsh language when the Agent showed no understanding of their situation.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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, or
- (iii) put the landlord's property at significant risk...

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice July 24, 2021 because the parties agreed on this. The Application was filed July 28, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The parties disagreed about whether the Tenant has been behaving in the manner alleged and therefore I have focused on the documentary evidence submitted to support each position.

The Landlord has submitted compelling documentary evidence of the Tenant smoking on the property, having a puppy in the rental unit and acting inappropriately towards the upstairs tenant.

There is no issue that the Tenant is not allowed to smoke on the property as this is set out at term 49 of the tenancy agreement. The Landlord has submitted compelling documentary evidence of the Tenant smoking on the property including the note dated May 04, 2021 from the Agent, the Caution Notice to Tenant dated May 05, 2021, the letter received May 05, 2021 from the upstairs tenant, the Caution Notice to Tenant dated July 06, 2021, the letter from another tenant of the building dated July 07, 2021, the letter from the upstairs tenant's mother, the Caution Notice to Tenant dated September 24, 2021, the email dated September 24, 2021 from a relative of the upstairs tenant, the letter from the upstairs tenant and the letter from a friend of the upstairs tenant from September 24, 2021. The documentary evidence listed supports the Agent's testimony about the smoking issue.

The only documentary evidence the Tenant submitted to support their position about the smoking issue, other than their own written statement, is the letter from their sister. The Tenant's sister does not live at the building and therefore I am not satisfied they would necessarily know whether the Tenant has smoked on the property as stated by the Agent, who lives at the building, and other tenants of the building.

Based on the evidence provided, I find it more likely than not that the Tenant has been smoking on the property despite term 49 of the tenancy agreement. I accept that the smoking has disturbed other occupants of the building because this is supported by the Landlord's documentary evidence already listed.

The Landlord has submitted compelling documentary evidence of the Tenant having a puppy in the rental unit despite the Pet Authorization Agreement stating, "No other pets are permitted in the tenant's rental unit at any time, whether owned by the tenant or a guest of the tenant." The Tenant having a puppy in the rental unit is supported by the Caution Notice to Tenant dated July 06, 2021, the letter from another tenant of the building dated July 07, 2021, the note dated September 22, 2021 from the Agent and the Caution Notice to Tenant dated September 24, 2021. The documentary evidence listed supports the Agent's testimony about the puppy issue.

The only documentary evidence the Tenant submitted to support their position about the puppy issue, other than their own written statement, is the letter from their sister. I have read the letter and do not understand it to state that the Tenant has not had a puppy in the rental unit. In fact, the letter seems to indicate that the puppy has been in the rental unit while the Tenant's daughter has been staying with the Tenant temporarily.

Based on the evidence provided, I find it more likely than not that the Tenant has had a puppy in the rental unit despite the Pet Authorization Agreement. I accept that the Tenant having a puppy in the rental unit has caused issues for other occupants and the Landlord because the Landlord's documentary evidence already listed shows that other tenants are contacting the Agent about this issue.

The Landlord has submitted compelling documentary evidence of the Tenant acting inappropriately towards the upstairs tenant including the note dated May 04, 2021 from the Agent, the Caution Notice to Tenant dated May 05, 2021, the letter received May 05, 2021 from the upstairs tenant, the letter from the upstairs tenant's mother, the email dated September 24, 2021 from a relative of the upstairs tenant, the letter from the upstairs tenant and the letter from a friend of the upstairs tenant from September 24, 2021. The documentary evidence listed supports the Agent's testimony about the Tenant acting inappropriately towards the upstairs tenant.

The only documentary evidence the Tenant submitted to support their position about acting inappropriately towards the upstairs tenant, other than their own written statement, is the letter from their sister. The only statement in the letter about the upstairs tenant is as follows:

P.S. Update: Yes, the police were called. It seems the tenant directly above [the Tenant] has been watching her every move and is seeking opportunities to further

persecute and harass [the Tenant], instead of offering help and kindness. Perhaps he has someone in mind who wants a suite to rent.

I do not find the above statement to be compelling evidence that the Tenant has not been acting inappropriately towards the upstairs tenant because it does not relate to the Tenant's behaviour. Further, the Tenant's sister does not live at the building and therefore I am not satisfied they would necessarily know whether the Tenant has been acting inappropriately towards the upstairs tenant.

I note that, as stated in the Introduction, I do not find it relevant to the issue before me whether the upstairs tenant has been harassing the Tenant. The Tenant is not entitled to behave inappropriately because other tenants are behaving inappropriately. If both the Tenant and the upstairs tenant are behaving inappropriately, the Landlord can issue both notices to end tenancy pursuant to section 47 of the *Act*. The poor behaviour of one does not excuse the poor behaviour of the other. The issue before me is the behaviour of the Tenant.

Based on the evidence provided, I find it more likely than not that the Tenant has been acting inappropriately towards the upstairs tenant.

I acknowledge that some of the documentary evidence referenced above is from after the Notice was issued. However, I have relied on it because I find it supports an ongoing pattern of behaviour by the Tenant.

Given the above, I find it more likely than not that the Tenant has been smoking on the property contrary to the tenancy agreement, has had a puppy in the rental unit contrary to the Pet Authorization Agreement and has been acting inappropriately towards the upstairs tenant. I find these issues amount to a significant interference with, or unreasonable disturbance of, another occupant or the Landlord of the residential property. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given the above, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the Notice and upheld the Notice. I have found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on December 31, 2021.

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the \$100.00 filing fee.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on December 31, 2021. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 01, 2021

Residential Tenancy Branch