



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT 4 HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 August 16, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated August 14, 2021 (the “Notice”)
- To recover the filing fee

This matter came before me December 17, 2021 and an Interim Decision was issued December 17, 2021. This decision should be read with the Interim Decision.

At the December 21, 2021 hearing, the Tenant appeared with the Advocate. The Tenant mentioned calling a witness who was not identified as a witness at the first hearing. The Interim Decision specifically states, “The parties are not permitted to call witnesses that were not mentioned at the first hearing.” Further, neither the Tenant nor the Advocate clarified why the proposed witness is relevant to the issues before me. In the circumstances, I did not hear from the witness. The Tenant did not seek to call the witness identified at the first hearing because this witness was not available for the second hearing.

M.M. and J.W. appeared at the second hearing for the Landlord.

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. The witnesses provided affirmed testimony at the first hearing.

Both parties submitted evidence prior to the hearing. The Tenant submitted the Notice, a written tenancy agreement and a proof of service as evidence. M.M. confirmed receipt of the hearing package. M.M. testified that the Landlord did not receive the Tenant's evidence; however, agreed this is not an issue given the nature of the evidence. The Tenant confirmed receipt of the Landlord's evidence.

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

Issues to be Decided

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

Background and Evidence

The Landlord submitted a copy of the written tenancy agreement between the parties and the parties agreed it is accurate. The tenancy started October 01, 2013 and is a month-to-month tenancy.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause state:

Tenant (her guest) did bring a large boat onsite (not allowed). Tenant was asked to remove the boat from the site or relocate it into the storage yard provided at a cost of \$25 for the remainder of the month. Tenant (and guest) refused and abused manager with foul language and threats. Warning letter issued by [Landlord] and served by managers. Again refused and significant abuse to

manager. Tenant contacted M.M. to advise it would not be moved. There is a history of abusive behaviour. Boat is still onsite Aug 13 530 pm.

M.M. confirmed at the second hearing that the Landlord is not seeking to end the tenancy solely based on the boat being on the site and instead is seeking to end the tenancy due to a history of abusive behaviour which also occurred in relation to the boat issue.

M.M. testified that the Notice was served on the Tenant in person August 14, 2021. The Landlord submitted a Proof of Service signed by a witness confirming service in person August 14, 2021. The Tenant did not recall when they received the Notice.

M.M. testified as follows in relation to the grounds for the Notice. The Tenant has a history of not being able to manage themselves in difficult situations. In 2018, the Tenant threw items at the park manager and a warning letter was issued to the Tenant about this. The Tenant's neighbour has considered moving because they find it difficult to live beside the Tenant.

M.M. further testified as follows. On August 10, 2021, a boat arrived on the Tenant's site. The emails in evidence show that J.R. asked the Tenant to remove the boat because boats are not allowed on sites. There were two people with the Tenant at the time who were quite intimidating and who leveraged this in the treatment of J.R. The emails in evidence show that the boat remained on the site. The emails in evidence show that M.M. had a phone call with the Tenant in which the Tenant acknowledged that the boat had to be removed, said they felt powerless to address this and that their visitors were refusing to remove the boat and that they could not do anything about this. M.M. told the Tenant their visitors had to move the boat and that they would speak to the visitors if the Tenant wished. The Tenant threatened M.M. and said M.M. had no grounds and that the Tenant would see M.M. in court. J.R. issued a warning letter to the Tenant August 13, 2021 about the boat and abusive behaviour. M.R. served the warning letter and the emails in evidence show that the Tenant's guest called M.R. an inappropriate name and told M.R. they would see them in court. M.M. issued the Notice based on the conduct of the Tenant and their visitors. The Tenant's visitors were intimidating and were trying to frighten M.M. off the site.

M.M. further testified as follows. Since the Notice was issued there have been continuing issues with the Tenant and their neighbour. The Tenant has called the

neighbour and their son inappropriate names, has glared at them and the police have been called. The Tenant has continued to harass their neighbour.

J.W. testified as follows. On August 16, 2021, they attended the site for an audit and the two visitors of the Tenant were “eyeballing” J.W. in an aggressive way. The two visitors had no reason to stop and interact with J.W.

J.R. testified as follows. There have been issues between the Tenant and their neighbour since 2017 when the Tenant made a comment to their neighbour that upset them. The Tenant has gone out of their way to harass their neighbour since 2017. Police have been involved due to the issues between the Tenant and their neighbour. In 2018, the Tenant threw objects at J.R. On August 10, 2021, a boat and trailer were parked on the site. They called the Tenant and told them the boat had to be removed. The Tenant was on speakerphone and their guests were loud and belligerent and stated “they don’t have a leg to stand on”. They told the Tenant to have their visitors remove the boat and hung up. On August 14, 2021, the boat and trailer were still on the site and M.R. delivered a warning letter to the Tenant. They were not present when M.R. attended the site; however, they have notes that M.R. told the Tenant to remove the boat and trailer and the Tenant’s visitor swore at and called M.R. an inappropriate name and told M.R. that they do not have a contract. M.R. was very upset about the encounter. The encounter was reported to M.M. who said they would issue the Notice August 14, 2021. M.M. and M.R. attended the site to serve the Notice and the boat and trailer were gone by August 16, 2021.

M.R. testified as follows. On August 13, 2021, they attended the site to deliver a warning letter to the Tenant. The Tenant was on the deck with another person. The Tenant refused to take the warning letter so M.R. put it on the table and started leaving when someone came out of the home and swore at M.R. and called M.R. an inappropriate name. The person then said to M.R., “You don’t have a contract”. The Tenant did not say anything or apologize to M.R.

M.M. advised that the Landlord is relying on the following tenancy agreement terms and Park Rules. Term 14 of the tenancy agreement about conduct. Page 3 of the tenancy agreement in relation to guests and the Tenant being responsible for their guests’ behaviour. Page 2 of the 2018 Park Rules about general conduct. Page 8 of the tenancy agreement which states that the Park Rules form part of the tenancy agreement and are material terms.

The Tenant testified as follows. The issues raised by the Landlord started when the Tenant put boards over mud after raking it to keep it level. Their neighbour and neighbour's mother did not understand the reason for the boards, did not talk to the Tenant about them and instead went to J.R. and M.R. about this. J.R. and M.R. told the Tenant their neighbour can drive where they want and the Tenant cannot stop them. The Tenant picked up the boards and tossed them towards their home.

The Advocate advised that the above relates to the February 2018 warning letter in evidence.

The Tenant testified that they once got into trouble for asking their neighbour to move so that smoke was not coming onto their site.

The Tenant testified that their visitor sincerely apologized for the incidents relating to the boat.

S.M. submitted that the Notice is unnecessary because the Tenant has been trying to sell the home for a while. S.M. submitted that there has been a lot of time between the issues raised by the Landlord in which there were no issues with the Tenant. S.M. said that the boat and trailer were on the site for six or seven days because the Tenant's visitor's truck broke down and had to be repaired before they could move it. S.M. submitted that the Tenant is trying their best to keep the peace. S.M. submitted that the Tenant was not present when their visitor swore at M.R. S.M. said that the Tenant's visitor swearing at M.R. is obviously a breach of a material term but the Tenant was not aware of this occurring until the first hearing. S.M. and the Tenant testified that the Tenant's visitor denies swearing at M.R.

The relevant evidence submitted by the Tenant includes the Notice and written tenancy agreement.

The Landlord submitted the following relevant evidence:

- Written tenancy agreement
- 2013 Park Rules
- 2018 Park Rules
- Warning letter dated February 08, 2018 about the Tenant throwing items near or at J.R.

- Warning letter dated September 18, 2018 about the Tenant harassing other tenants and stating that further harassing behaviour will result in a 30 day notice to end tenancy
- Email dated August 10, 2021 about the Tenant being told to remove the boat and a “very belligerent man saying that [the Landlord] did NOT have a leg to stand on”
- Warning letter dated August 11, 2021 about the boat issue
- Email dated August 13, 2021 about the Tenant being told the boat must be moved and M.M. telling the Tenant that the tenancy could end over this issue
- Email dated August 13, 2021 about M.R. delivering a warning letter to the Tenant and the Tenant’s visitor calling M.R. an inappropriate name and telling M.R. they will see them in court. The email states that the visitor was very abusive and belligerent.
- Emails showing the boat was on the site until August 16, 2021
- Email about issues between the Tenant and their neighbour and the police being called
- Proof of Service for the Notice
- Photo of the boat and trailer at the site

Analysis

The Notice was issued pursuant to section 40 of the *Act* and the following subsection:

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

(g) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives **written notice to do so**; (emphasis added)

The Tenant had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. I am satisfied based on the testimony of M.M. and Proof of Service that the Tenant received the Notice August 14, 2021. The Application was filed August 16, 2021, within time.

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

Policy Guideline 8 deals with material terms and states in part (page 2):

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – **must** inform the other party **in writing**:

- that there is a problem;
- **that they believe the problem is a breach of a material term of the tenancy agreement;**
- **that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and**
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

(emphasis added)

There are three written notices from the Landlord to the Tenant in evidence.

A warning letter dated August 11, 2021 stating, “Boats and RVs are not allowed to be stored on site”. The letter states, “remove the boat from the property or sign a storage agreement and move to compound”. The letter does not include a date by which the Tenant is to remove the boat and this portion of the form letter is blank.

A warning letter dated September 18, 2018 about the Tenant harassing others and stating that further harassment will result in a 30 day notice to end tenancy for cause.

A warning letter dated February 08, 2018 in relation to the Tenant’s conduct and the allegation that the Tenant threw items at or near the Property Manager in anger.

The August 11, 2021 warning letter does not comply with Policy Guideline 8 for two reasons. First, the letter does not state that the problem noted is a breach of a material term of the tenancy agreement. Second, the letter does not include a deadline by which the Tenant is to remove the boat.

I find the requirement in Policy Guideline 8 that a breach letter state that the problem noted is a breach of a material term important because this alerts a tenant to the seriousness of the situation and that the landlord could end their tenancy pursuant to section 40(1)(g) of the *Act* versus another subsection. I find the requirement in Policy Guideline 8 that a breach letter include a timeline to comply important because section 40(1)(g) of the *Act* specifically contemplates the tenant being given a reasonable opportunity to correct the breach within a reasonable timeline. The tenant should be made aware of what that timeline is.

I find the Landlord has not complied with Policy Guideline 8 in relation to the breach letter issued August 11, 2021. Further, at the hearing, M.M. confirmed the Landlord is not seeking to end the tenancy on the sole basis of the boat being on the site and this is the only issue the August 11, 2021 warning letter addresses.

The 2018 warning letters do not comply with Policy Guideline 8 and the requirements set out above. More importantly, the Landlord cannot end this tenancy based on breaches of material terms which occurred almost three years prior to the Notice being issued. Although a pattern of behaviour may be relevant, the warning letters issued in 2018 do not relate to the warning letter issued in 2021 because the 2018 warning letters relate to the Tenant's conduct and the 2021 warning letter relates to the boat being parked on the site. I acknowledge that the Landlord also provided evidence about the Tenant's conduct more recently, as well as the conduct of the Tenant's guests; however, the Tenant has not been issued a breach letter in accordance with Policy Guideline 8 in relation to these issues. I find that the Landlord must issue a breach letter in accordance with Policy Guideline 8 to end a tenancy for breach of a material term because the Policy Guideline specifically states "must" and section 40(1)(g)(ii) of the *Act* specifically refers to a landlord giving written notice to comply.

I acknowledge that the Landlord provided evidence about numerous issues they have had with the Tenant; however, the Landlord has issued the Notice on the sole basis of breach of a material term and therefore must comply with both section 40(1)(g)(ii) of the *Act* and Policy Guideline 8 in order to end this tenancy. I find the Landlord has not done so here.

Given the above, I am not satisfied the Landlord complied with Policy Guideline 8 in relation to a breach letter regarding the boat issue or the recent conduct of the Tenant or their guests and therefore I am not satisfied the Landlord had grounds to issue the Notice. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 65(1) of the *Act*. Pursuant to section 65(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

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 22, 2021

Residential Tenancy Branch