



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kiwanis Village Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 31, 2021 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 16, 2021 (the "Notice").

The Tenant appeared at the hearing with R.B., a social worker, H.M.W., an advocate, and D.C., a witness. D.C. was not involved in the hearing until required. M.A. and their assistant K.S. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant, R.B, M.A. and D.C. provided affirmed testimony.

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, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony provided. I have only referred 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, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started December 27, 2019 and is a month-to-month tenancy. Rent is \$505.00 per month due on the first day of each month. The Tenant paid a \$252.50 security deposit.

The Notice was submitted. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by M.A. The Notice has an effective date of September 30, 2021. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
2. Breach of a material term.

The "Details of Cause" section of the Notice states:

[The Tenant] has been verbally harassing his neighbours. He has been spoken to on several occasions about this and was served a formal warning letter on October 07, 2020. He has continued to harass his neighbours. One neighbour has vacated because of his continued harassment.

H.M.W. advised that the Tenant is not taking issue with the form or content of the Notice.

M.A. testified that the Notice was posted to the door of the rental unit August 16, 2021. H.M.W. advised that the Tenant was in the hospital August 15-25, 2021 and referred to hospital discharge papers in evidence which show the Tenant was in the hospital from August 15, 2021 to August 25, 2021.

In relation to the grounds for the Notice, M.A. referred to emails and notes in evidence outlining complaints made by other tenants about the Tenant. M.A. referred to an email from another tenant (T.F.) who moved due to constant harassment from the Tenant. M.A. referred to notes in evidence about an alleged assault by the Tenant on their neighbour (T.F.). M.A. testified that the Tenant is subject to smoke because people are allowed to smoke on the property and the Tenant gets upset about this and can be aggressive and scary.

There is a note in evidence by M.V. dated January 06, 2021. M.A. testified that M.V. is the Landlord's office assistant. The note outlines a conversation M.V. had with the Tenant and states:

[The Tenant] came home and his place was "full of smoke." His neighbour is a liar when he says he doesn't smoke...[The Tenant] said he's going to take care of it even if he goes to jail for it. He's sick of it. And we didn't get the full story when he pushed [T.F.] (the neighbour...) down. Terry had called him a f---ing a--hole. If something isn't done, he's going to put a gun to the guy's head.

M.A. testified that they are very sure the Tenant would not follow through with the above statements; however, they have 120 other tenants they must look after.

The Tenant testified as follows in relation to the alleged assault on T.F. They came home to a car parked in their spot. The car belonged to a visitor of T.F., their neighbour. They had a conversation with T.F. T.F. called them an inappropriate name. They walked up to T.F. They never touched T.F. T.F. tripped over something and fell. They walked back to their unit. They were "pissed off" because of the parking situation. They were not contacted by the police and charges were not laid in relation to this incident.

The Tenant testified as follows about the January 06, 2021 note from M.V. outlined above. They were frustrated. Their parking was taken which has been an issue for a long time. They phoned the office and "got no satisfaction". Their "old self showed up" and they were "mouthing off". They would never hurt anybody. They might have said they were "going to put a gun to the guy's head" but they didn't mean it. They didn't hear from the police about this and do not know if they received a notice from the Landlord about this.

The Tenant further testified that they did not harass K.B. as claimed and they were only aware of one complaint against them.

H.M.W. provided the following submissions. In relation to the alleged assault on T.F., there is no first-hand evidence of this, only a second-hand account. The Tenant acknowledges they had a heated exchange with T.F.; however, this is not anything more than issues between tenants that happen all the time in a tenancy and is not significant. Further, T.F.'s claims in their email submitted are not supported by the Landlord's evidence.

H.M.W. provided the following further submissions. In relation to the statement by the Tenant about “putting a gun to the guy’s head”, the Landlord did not contact the police about this. Further, the Landlord did not give the Tenant a warning about this and there is no mention of it in the Notice. The Landlord did not consider the statement about “putting a gun to the guy’s head” noteworthy.

H.M.W. provided the following further submissions. In relation to complaints from K.B., these were not included in the warning letter issued to the Tenant which suggests the Landlord did not think the complaints required a warning.

H.M.W. provided the following further submissions. There are letters in evidence that speak to the Tenant’s character. The Tenant submits that their actions do not meet the threshold under section 47 of the *Residential Tenancy Act* (the “Act”).

D.C. provided the following relevant testimony. K.B. told them K.B. was being harassed by the Tenant and was scared of the Tenant but they do not think this is true because K.B. is a heavy drinker.

The Landlord submitted the following relevant evidence:

- A note by M.V. dated September 29, 2020 about T.F. attending the office to say they do not feel safe with the Tenant being so aggressive and unpredictable and T.F. worries that the Tenant will come after T.F. in retaliation if a police officer goes to talk to the Tenant.
- A typed note by K.S. dated September 30, 2020 stating the following. The Tenant called the office to complain about people parking in their spot. K.S. told the Tenant they would put notices on the vehicles. The Tenant started yelling and swearing at K.S. T.F. later called and said the Tenant just assaulted him. T.F. said the Tenant came charging at T.F., shoved T.F. in the chest and T.F. fell backwards. T.F. was reluctant to call the police because he does not feel safe in his own home as it is not the first time the Tenant has had a run in with him.
- A note by M.V. dated September 30, 2020 about K.B. advising M.V. that the Tenant has come to K.B.’s patio numerous times and yelled at K.B. for smoking pot. K.B. said “I’m tired of the man’s bullying.”

- A letter by M.A. to the Tenant dated October 07, 2020 about the alleged assault on T.F.
- The note by M.V. dated January 06, 2021 outlined above.
- An email from T.F. dated July 31, 2021 stating in part, "You told me after [the Tenant] receive his letter on e more incident he would be gone. Well I was terrorized 7 weeks and threatened once a week and 3 days after he was sorry this happened each week and I reported it 3 or 4 time nothing was done."
- An email from K.B. dated August 06, 2021 stating, "[The Tenant] has been yelling and hearsing me for a long time now if I'm having a smoke out side...Yesterday he yelled at me...he jumped the fence in a very threading way, fists clenched, I told him go a ahead and hit me and the police would be here faster then he could blink. This herding for a long time now I have started looking for somewhere else to live." There is a handwritten note by M.V. on this email stating in part, K.B. "says he can't take this another minute and the intimidation is constant."
- A note by M.V. dated August 13, 2021 stating the following. K.B. called about progress with his harassing neighbour. Every time K.B. steps outside [the Tenant] stands outside and glares at K.B. the whole time. K.B. printed an application for another building. If the Tenant does not go, K.B. cannot stay.

The Tenant submitted letters from B.M., P.H., D.C., S.P., M. about the Tenant. The authors all speak well of the Tenant. I note that the letter from P.H. states in part, "Although [the Tenant] sometimes suffers from over-reaction to situations he finds trying..."

M.A. sought an Order of Possession effective March 31, 2022.

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...

(h) 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...

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. I accept the testimony of M.A. that the Notice was posted to the door of the rental unit August 16, 2021. I also accept that the Tenant was in the hospital from August 15-25, 2021 based on the hospital discharge papers in evidence. I find the Tenant received the Notice August 25, 2021. The Application was filed August 31, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who 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.

I am satisfied based on the evidence provided by the Landlord that the Tenant has significantly interfered with and unreasonably disturbed T.F. and K.B. I find that the Landlord has submitted sufficient compelling evidence showing the Tenant gets upset about the parking issue and people smoking and interferes with and disturbs other tenants who the Tenant feels are responsible for causing these issues.

Both T.F. and K.B. sent emails to the Landlord about being terrorized, threatened, yelled at and harassed by the Tenant. The emails suggest that T.F. moved out because of the Tenant's actions and K.B. took steps to move out because of the Tenant's actions.

I find the notes of M.V. to be further compelling evidence of T.F. and K.B. making complaints to the Landlord about the Tenant being aggressive and intimidating as well

as yelling at and harassing them causing them to feel unsafe. I find the notes of M.V. reliable and credible in part because M.V. is the Landlord's office assistant and a third-party to the disputes between the Tenant, T.F. and K.B. There is no compelling reason to disregard M.V.'s notes before me. Further, the Tenant acknowledged they might have said they were "going to put a gun to the guy's head" as written in M.V.'s notes which further supports the reliability and credibility of these notes.

I accept M.A.'s testimony that the Tenant gets upset about people smoking on the property, despite them being permitted to do so, and can be "aggressive" and "scary" as a result because this is supported by the notes of M.V. and the email from K.B.

In relation to the alleged assault, I accept that there was at least a heated exchange between the Tenant and T.F. over a parking issue because H.M.W. acknowledged this. I also find that the Tenant chose to engage with T.F. over the parking issue because all accounts of the event support this. I do not accept the submission of H.M.W. that having a heated exchange with a neighbour over parking, which involves the Tenant approaching T.F. and either pushing T.F. or T.F. tripping and falling, is something that happens all the time in tenancies. Even accepting the Tenant's version of events, I find this incident concerning and find it supports the overall picture of the Tenant shown in the evidence which is of someone who gets upset or "pissed off" over parking issues and smoking and acts inappropriately as a result.

The overall picture of the Tenant being someone who gets upset or "pissed off" over parking issues and smoking and acts inappropriately as a result is further shown in the January 06, 2021 note from M.V. outlined in the above "Background and Evidence" section of this decision. I accept that the Tenant made the statements outlined by M.V. because the Tenant did not dispute this and acknowledged they might have made them. The Tenant stated they were frustrated over the parking issue and "got no satisfaction" from phoning the office. The Tenant acknowledged they were "mouthing off". I find the comments that the Tenant is "going to take care of it even if he goes to jail for it" and "If something isn't done, he's going to put a gun to the guy's head" serious, concerning and inappropriate regardless of whether others believed the Tenant would in fact kill someone. These types of comments about one's neighbour are grounds to end a tenancy, whether police get involved or not. I do not find the absence of a warning letter to the Tenant about this incident relevant, the Tenant should know these comments are inappropriate. Further, I do not agree that the Notice does not include this incident because the Notice is about the Tenant harassing their neighbours. I find making

threats about the Tenant's neighbours is captured by the issue stated of harassing neighbours.

I acknowledge that there are letters from other tenants in evidence speaking well of the Tenant. However, the content of the letters does not call into question the Landlord's evidence showing the Tenant interfered with and disturbed T.F. and K.B. The letters simply outline the authors' personal views of the Tenant and personal experiences with the Tenant. I do not find it relevant that the Tenant has not interfered with and disturb five of their neighbours because I am satisfied based on the evidence provided that the Tenant has interfered with and disturbed two of their neighbours to the point that these neighbours either moved out or took steps to move out.

I also note that the Tenant's own evidence supports the Landlord's position to some extent as D.C. acknowledged K.B. told them K.B. was being harassed by the Tenant and the letter from P.H. states in part, "Although [the Tenant] sometimes suffers from over-reaction to situations he finds trying..."

The Landlord is only required to prove the grounds for the Notice on a balance of probabilities. I find the totality of the Landlord's evidence does show that it is more likely than not that the Tenant gets upset about the parking issues and people smoking on the property and reacts in ways that are aggressive and threatening such that other tenants have been scared of the Tenant. I find the Tenant has significantly interfered with and unreasonably disturbed T.F. and K.B. and that 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 March 31, 2022 at 1:00 p.m.

Conclusion

The Notice is upheld and the dispute is dismissed without leave to re-apply. The Landlord is issued an Order of Possession effective March 31, 2022 at 1:00 p.m. 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: January 25, 2022

Residential Tenancy Branch