



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 6, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice)
- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the 1-Month Notice)

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. A witness, G.W., also attended the hearing in support of the Landlord. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The parties both confirmed that they wish to cancel the 10 Day Notice from September 2021, and neither party wished to discuss the 10 Day Notice any further. Both parties agreed to set aside the 10 Day Notice, and requested I amend this application to only consider the 1 Month Notice, and related evidence. By mutual consent, I amend the Tenant's application accordingly, and cancel the 10 Day Notice, issued in September 2021. The only remaining ground on this application is related to the 1 Month Notice, which will be discussed further below.

The Landlord confirmed receipt of the Tenant's application package and Notice of Hearing sometime in September 2021. The Tenant stated he did not serve his evidence with this hearing package, but sent his evidence by email, around December 28, 2021. The Landlord denied getting the evidence. The Tenant stated he waited so long to serve

his evidence because he was under the understanding that he and the Landlord had agreed that this hearing was to be cancelled. The Tenant provided a copy of a text message with the Landlord to show the agreement made about cancelling this hearing. The Landlord denied making any agreement with the Tenant about cancelling the hearing. I have reviewed the testimony and evidence on this matter, and I find the text message is not sufficiently clear, such that I could find that anything was formally agreed to, in terms of this proceeding. I find the Tenant was required to serve his evidence in accordance with the Rules of Procedure, and the Act but did not do so.

There is no evidence the Tenant and the Landlord had any previous agreement or arrangement whereby the parties could use email as a means for service. Without an agreement to serve evidence by email, I find the Tenant was required to serve his evidence to the Landlord by any of the approved methods of service under section 88 of the Act. Email is not sufficient in this case. The Tenant not only failed to serve his evidence on time (which says it must be received by the respondent no later than 14 days before the hearing) but he failed to appropriately send the evidence in an allowable manner, such that it can be considered sufficiently served for the purposes of this hearing. I find the Tenant has failed to sufficiently serve his evidence, and I find the entirety of his documentary evidence is not admissible.

The Tenant confirmed receipt of the Landlord's evidence on December 28, 2021. I find the Landlord served his evidence in accordance with the Rules and the Act, and it was received, by mail, at least 7 days before the hearing. As a respondent on this application, the Landlord had until December 30, 2021, to ensure the Tenant was served. I find the Landlord sufficiently served the Tenant with all of his evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the 1 Month Notice on August 20, 2021. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

Under the “Details of Cause” section of the Notice, the Landlord pointed to a troubling pattern of behavior from the Tenant whereby he has disturbed neighbours with his loud music, yelling, and has also disturbed patrons of the business downstairs. The Landlord also pointed to the fact that there were at least 5 times where the police had to come over the past few months, and also that there have been bylaw complaints about the noise.

At the hearing, the Landlord explained that the Tenant has always been aggressive and rude towards others, particularly other occupants, and many people in and around the rental unit are afraid of him. The Landlord explained that the Tenant rents the upper floor of a 2-storey mixed-use building. The bottom floor consists of a commercial storefront, and the Tenant rents the whole upstairs (4 bedrooms) of the building under a single tenancy agreement, which was provided into evidence. The Landlord explained that the Tenant then rents out the other bedrooms in the rental unit to other occupants. The Landlord explained that the witness in attendance at the hearing was a previous occupant of the rental unit, and she rented a room from the Tenant from July 4, 2021, until August 26, 2021.

The Landlord explained that the Tenant has a history of getting in fights with the other occupants he rents the rooms to. The Landlord also stated that the Tenant has a history of making loud noises, partying, yelling, throwing items off the balcony, and getting in altercations with the Police. The Landlord referred to an incident in April 2021, where the Tenant “got drunk”, had a party, and got into a fight with others in the rental unit. The Landlord stated that the police were called, and eventually the Tenant was “tasered” by police. The Landlord did not elaborate further on this particular incident.

The Landlord pointed to some letters and emails he received from people who occupy a rental unit in the building next door. The Landlord clarified that the building next door, where the noise and disturbance complaints originated from, is not a part of this particular rental unit or building. The Landlord confirmed that he does not own or manage the rental units in the building next door, yet he was sent complaints by those people because of the actions of this Tenant. The Landlord explained that the people in

the building next door have sent numerous letters and emails about how disruptive and noisy the Tenant is.

The Landlord had a witness, G.W., attend the hearing to elaborate on her issues with the Tenant. G.W. stated that she rented a room within this rental unit, from the Tenant, starting July 4, 2021. G.W. stated that shortly after she moved in, she had discussions with the other occupants and the Tenant about re-signing the tenancy agreement to include all occupants as Tenants, under the tenancy agreement. G.W. stated that this is when the Tenant started acting out against her and the other occupant living there at the time. G.W. stated that she witnessed the Tenant antagonizing the other occupant, being aggressive with him, and using physical force to enter his room on more than one occasion. G.W. stated that at one point the Tenant kicked in the other occupant's bedroom door, and a fight followed shortly thereafter. G.W. stated that she believes the Tenant was unreasonably aggressive towards the other occupant.

G.W. also stated that after some of this conflict erupted, she went to stay at a friend's house because she did not feel safe around the Tenant. G.W. stated that she left on July 20, 2021. When she returned sporadically, she noticed the Tenant had removed her belongings from the common space, and broken into her bedroom. G.W. stated that the Tenant started physically removing her belongings from her bedroom around August 26, 2021, and this is when she had to move out, to avoid further conflict.

The Landlord loosely referred to an incident where the Tenant threw items off the balcony, which disrupted patrons of the retail store below.

The Tenant stated that he is being blamed for issues that are not his fault. The Tenant stated that this rental unit is on a busy street, with many transient people in the area. The Tenant asserted that these transient people will often yell, play music, and create disturbance in and around the building, and now he is being blamed for it. The Tenant stated the people living in the building next door are mistaking the noise from the people outside, as noise from his unit. The Tenant denies being disruptive and loud, as alleged. The Tenant acknowledged that he had a dispute and confrontation with another occupant. However, the Tenant stated it started because of the other occupant's aggression. The Tenant also does not feel he did anything aggressive or improper with G.W., who was in attendance at the hearing. The Tenant stated that he felt, as the main Tenant on the tenancy agreement, that he had to maintain order in the rental unit, but his actions are being interpreted as hostile and aggressive.

The Tenant feels the letters and claims from the person living in the building next door are fabricated because one of the photos he provided were not even of him, and the letter included factually inaccurate claims about noise.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The issue the Landlord identified on this Notice was:

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

Section 47 states the following, and is the basis for the grounds selected by the Landlord on the 1 Month Notice:

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

The Landlord identified 3 main complaints on the 1 Month Notice and under the above noted ground.

The first was related to complaints from the occupants of the separate, but neighbouring building. The second was relating to a complaint from the Tenant's roommate, G.W, who was at the hearing. The third was related to disruptions to the patrons of the retail store below the rental unit.

First, I turn to the issue regarding the complaints from the people occupying space in the building next door. I accept that the Landlord has received complaint letters and correspondence from people who occupy space in the building next door. However, I note the complainants and authors of those letters are residing in another nearby rental

building, which is a separately owned and operated residential property, in a distinct building. Section 47(1)(d) permits the Landlord to end the tenancy provided it can be proven that the Tenant, or guest, unreasonably disturbed another occupant or the Landlord of the residential property. I find these complaints originated from outside of the residential property, as it is a separate, distinct building, which is not owned or managed by the Landlord. I do not find the complaints originating from the building next door are sufficient to end the tenancy under this part of the Act.

With respect to the second issue, I accept that the Tenant has had conflict with more than one of his roommates, including G.W. It also appears the Tenant has had issues with more than one of his roommates, all of whom he permitted to occupy and rent separate bedrooms within his rental unit. Residential Tenancy Policy Guideline 13 states that where a Tenant allows a person who is not a Tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a Tenant. None of the roommates/occupants were added to the tenancy agreement.

Further, I note the following portion of Residential Tenancy Policy Guideline #27 – Jurisdiction:

4. DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

The Landlord presented the disputes between the Tenant and his roommates as a basis to end this tenancy. However, I find I have no jurisdiction to consider disputes between roommates and occupants of the same rental unit, when only one tenancy agreement exists between the Landlord and the Tenant (not with the occupants/roommates). I do not find the disputes between the Tenant and his roommates are sufficient to end the tenancy for cause under the ground the Landlord selected.

With respect to the third point made by the Landlord, regarding the Tenant disturbing patrons of the retail store below, I found the Landlord's testimony on this point was vague and unclear. The Landlord was not clear on what the disturbances were, when they occurred, and whether or not it actually caused the Landlord any disturbance. I

note the Tenant denies disturbing the business below. Ultimately, I find the Landlord failed to sufficiently detail this part of the 1 Month Notice.

Overall, I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Notice is cancelled.

The tenant's application is successful. I order the tenancy to continue until ended in accordance with the *Act*.

Pursuant to section 72 of the Act, I award the recovery of the filing fee paid by the Tenant. The Tenant may deduct \$100.00 from a future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: January 7, 2022

Residential Tenancy Branch