



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Office Manager, KM, and the Tenant, CG, Legal Counsel, DK, and Registered Clinical Counsellor, PD, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on October 25, 2021 by posting the document on the Tenant's door. The Landlord also provided a witnessed RTB#34 Proof of Service form. The Tenant confirmed receipt of the One Month Notice but could not confirm the date. I find the One Month Notice was deemed served on October 28, 2021 according to Sections 88(g) and 90(c) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for this hearing on the Landlord via Canada Post registered mail on November 5, 2021 (the

“NoDRP package”). DK referred me to the Canada Post registered mail tracking number as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the documents for this hearing five days after mailing them, on November 10, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord’s One Month Notice?
2. Is the Tenant entitled to a recovery of the application filing fee?
3. If the Tenant fails in her application, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2019 to end on April 30, 2020. After that time period, the tenancy continued on a month-to-month basis. The Tenant testified that she pays \$1,050.00 inclusive of parking payable on the first day of each month. A security deposit of \$475.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Specific details on the One Month Notice state *‘continued disregard of building rules and common courtesy, continued to disturb almost all neighbors on her floor and others with her actions. Tenant is exposing herself to other residents in the building and from her balcony. Tenant monopolizes the laundry rooms.’* The effective date of the One Month Notice was November 30, 2021.

The Landlord testifies to multiple occasions where incident reports or emails were received mostly about the Tenant’s excessive laundry room use. The following table lists emails or other complaint notices received from other occupants or resident managers, who are also occupants in the building:

DATE	INCIDENT/REPORT
June 13, 2021	Email from an occupant in suite 1103 - Tenant using laundry facilities for over 12 hours. Tenant running back and forth from her apartment to the laundry room
July 10, 2021	Incident Report by Relief Manager, occupant in suite 214 - Tenant left a box of garbage in the basement by the elevator
August 11, 2021	Incident Report by tenant in 1006 - water pouring from her bathroom ceiling, 1106 was taking a shower, 1106 would not answer her door
August 14, 2021	Incident Report - plugged toilet with paper towels
August 16, 2021	Incident Report by Resident Manager, occupant in suite 1105 - from Friday night to Sunday afternoon bags of laundry and wet laundry on counter, sour smell from wet laundry, bagged up laundry
August 23-24, 2021	Incident Report by Resident Manager, occupant in suite 1105 - Tenant has taken over laundry room again with multiple bags of laundry, clothes in washer and dryer but not going, clothes on top of machines and the folding table
August 29, 2021	Email from an occupant in suite 1103 - tried for 3 days to do his laundry, verbally abused by Tenant
October 2, 2021	Incident Report by Resident Manager, occupant in suite 1105 - Waited all day for washers and dryers, received calls from other tenants about Tenant's laundry facility use. On October 3, 2021, the Tenant moved to the 8th floor laundry room
October 5, 2021	Letter from Property Manager - Laundry use final warning
October 8, 2021	Email from an occupant in suite 1104 - Tenant running up and down the hallways and occupying the laundry room, requesting alternative housing
October 22, 2021	Incident Report by Resident Manager, occupant in suite 1105 - Tenant is doing laundry almost everyday for 6-8 hours, this day was doing laundry up to 10:30 p.m., the next day the Tenant was doing laundry at 7:00 a.m. up to noon. Another tenant asked the Resident Manager if they could do something about the Tenant's long use of the laundry facilities as he needed some time

The Resident Manager noted that laundry room rules were posted in each laundry room after the Tenant's use became unworkable for others in the building. These rules follow:

Laundry Room Rules

1. Do not overload the machines
2. Check your pockets
3. Clean up after yourself before leaving the laundry room
4. Remove lint from the screens
5. The folding table is for tenants to fold their clean dried clothes only
6. Do not leave your laundry in the laundry for any reason
7. If the machines are in use do not leave your laundry there while waiting, take it back home and check later
8. The trash cans are for laundry items only and not personal trash

Thank for your co-operation!

The Landlord points to rules 6 and 7 that the Tenant is breaching.

On August 24, 2021, the Landlord wrote the Tenant with a laundry complaint. It stated in part:

We have received complaints about your laundry being left all day and night in the washing machine and the folding table. We would like to remind you to take your laundry out of the washer and dryer promptly when it is finished and do not leave it for the entire day and night. If laundry is being left unattended we are not responsible for items going missing or thrown away.

...

Kindly be courteous to the other tenants by removing your clothing promptly from the washers, dryers and the folding table. Help us avoid having to set up a specific time for you to do laundry, as well as keeping your door closed with nothing left in front of it. [emphasis mine]

On October 5, 2021, the Landlord sent the Tenant a final warning letter, again this having to do with the Tenant's *laundry being left all day and night in the washing machine and the folding table for multiple days*.

The latest complaint made by a resident manager on October 22, 2021 states:

[The Tenant] [incorrect suite #] does laundry almost everyday for 6-8 hours. On Tuesday Oct 22 her last loads were still going at 10:30 at night (very loud with zippers or buckles) when I spoke to her first she denied then said she didn't know it was 10:30 (it was so loud I could hear it from inside my unit When I woke at 7 am on 23rd she was already doing laundry and was still doing it at noon when [another suite] had knocked on my door asking if I could do something about it as he had be trying since the night before! This has been going on for a long time but even if we do get to use the machine on our floor it usually means she is doing this on other floors – yes I get complaints about it! She says she has O.C.D. and must do things her way but she has shown no consideration for all the others, she has inconvenienced on regular basis! OCD is her excuse for everything but she wasn't like this when she moved in. She said we complain too often and she will call her advocate & [company] so just a heads up!

The Tenant testified that she has been afflicted with Obsessive Compulsive Disorder (“OCD”) and Attention Deficient Hyperactivity Disorder (“ADHD”). Her previous registered clinical counsellor confirms the ADHD diagnosis. PD lists the following traits an ADHD sufferer my exhibit:

1. *often fail to give close attention to details or make careless mistakes in schoolwork, work, or other activities;*
2. *often have difficulty sustaining attention in tasks;*
3. *often do not seem to listen when spoken to directly;*
4. *often do not follow through on instructions and fail to finish schoolwork, chores or duties in the workplace (not due to oppositional behavior or failure to understand instructions);*
5. *often have difficulty organizing tasks and activities;*
6. *are often easily distracted by extraneous stimuli;*
7. *are often forgetful in daily activities;*
8. *are often “on the go” or act as if “driven by a motor;”*
9. *often talk excessively;*
10. *often blurt out answers before questions have been completed; and*
11. *often interrupt or intrude on others (APA, 2013).*

PD further provided:

I know that one of Christina's landlord's complaints was that she does laundry at odd hours of the day/night and "leaves her belongings for days in the laundry room." I have difficulty believing that Christina leaves her belongings unattended for "days" as they would not likely be there for her to retrieve; however, if this were the case, her ADHD diagnosis would likely be a contributing factor. I also am aware that Christina was on the receiving end of an angry resident who confronted her on several occasions and berated her for the frequency with which she does her laundry. As a result, she has been doing her laundry at night and elsewhere in the building so as not to encounter this resident again. It is possible that in employing a strategy to avoid conflict and keep herself safe, she has felt forced to do her laundry at night and she may fall asleep before the cycle is completed which has resulted in her laundry being left in the laundry room for an extended period of time.

DK asked if there were ever any agreements made with the Tenant about when appropriate hours to do laundry could occur. I note the Landlord suggested this in their August 24, 2021 letter. KM stated the Landlord is not prepared to come to a settlement.

The Landlord said the first time, they let it slide, but since then eight complaints have been generated by other tenants and resident managers in the building - they cannot go on like this. The Landlord feels they cannot provide quiet enjoyment to other tenants in the building. The Landlord feels this may not be an appropriate residence for someone with OCD and is concerned that the Tenant is not receiving the correct supports.

Analysis

The standard of proof as noted by Rule 6.6 of the RTB Rules of Procedure in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

- 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 One Month Notice deemed served on October 28, 2021 complied in form and content pursuant to Section 52 of the Act. The Tenant applied for dispute resolution within the allowable legislative timeframe.

The Landlord provided several notices of disturbances that the Tenant is causing in the building, especially on the Resident Manager's floor. The Landlord explained the Tenant's conduct negatively affects other tenants and the Landlord's own enjoyment of the residential property. The Tenant's counsellor provided an explanation for this disruptive behaviour based on the Tenant's mental health issues. DK and PD both suggested providing the Tenant with an agreement about when laundry room use could be dedicated to her; however, the Landlord is not in agreement with this kind of strategy.

It is the Landlord's obligation to ensure that all the tenants' entitlement to quiet enjoyment is protected including use of common areas for reasonable and lawful purposes pursuant to Section 28 of the Act. Residential Tenancy Policy Guideline #6 deals with a tenant's entitlement to quiet enjoyment of the residential property. The Tenant's conduct in this matter is not the result of a single event over one weekend, but many events over a significant period of time starting, at least, from June 13, 2021. The Tenant's taking over the laundry facilities has caused substantial interference for other occupants of the residential property and for the Landlord. The Landlord's laundry room rules do not specify timeframes allowable for laundry room use, but the use of the facilities must be reasonable and open for all occupants on the same floor to have equitable, unfettered access. The Landlord must make efforts to minimize disruption to other occupants and their staff.

I find that the Tenant's conduct has significantly interfered with or unreasonably disturbed other occupants or the Landlord of the residential property. As noted above, Residential Tenancy Policy Guideline #6 highlights the issues which may arise when contemplating when quiet enjoyment has been breached. It states in part as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I accept the testimony of the Landlord as it relates to the disturbances caused by the Tenant as described above and I find that these disturbances amount to a "significant interference" and "unreasonable disturbance." I find that the Landlord has proven their case that this tenancy must end. I dismiss the Tenant's application to cancel the One Month Notice without leave to re-apply.

I appreciate the distress this will cause the Tenant, so I am providing a longer timeframe for the Tenant to find alternative housing. As I uphold the Landlord's One Month Notice, I grant an Order of Possession to the Landlord pursuant to Section 55(1) of the Act which will be effective at 1:00 p.m. on February 28, 2022.

Conclusion

The Landlord's One Month Notice is upheld, and I grant an Order of Possession which is effective at 1:00 p.m. on February 28, 2022.

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 12, 2022

Residential Tenancy Branch