

DECISION

Dispute Codes **OPC, MNDL-S, FFL, FFT, CNC-MT, OLC, MNDCT, RP, LRE, PSF, MNRT**

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on September 17, 2021, is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for damage to the property;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application filed on September 24, 2021, is seeking orders as follows:

1. For more time to be allowed to dispute a One Month Notice for Cause (the "Notice") issued on August 11, 2021;
2. To have the landlord make repairs to the rental unit;
3. To suspend or set conditions on the landlord rights to enter the rental unit;
4. To have the landlord provide services or facilities required by the tenancy agreement or law;
5. I want to be paid back the cost of emergency repairs that I made during the tenancy; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not recording this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties have indicated several matters of dispute on their respective Applications for Dispute Resolution, the most urgent of which is the tenant's application to set aside for

to dispute the Notice and the landlord's application for an order of possession. I find that not all the claims on their respective Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to be allowed more time to dispute the Notice and the landlord's request for an order of possession. The balance of their respective applications is dismissed, with leave to reapply.

I should note that the tenant's monetary claim is an amount that exceeds my authority. Should the tenant want to proceed with their claim they must make that petition to the Supreme Court or alternatively reduce the amount to be within the jurisdiction of the Residential Tenancy Branch.

Issues to be Decided

Should the tenant be given more time to dispute the Notice?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on December 1, 2020. Rent in the amount of \$1,050.00 was payable on the first of each month. The tenant paid a security deposit of \$525.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2021.

The reason stated in the Notice was that the tenant or a persons permitted on the property by the tenant has :

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- has cause extraordinary damage to the unit or property.

The landlord testified that the tenant was served with the Notice by registered mail sent on August 11, 2021. The landlord stated the package was returned unclaimed. Filed in evidence is a copy of the Canada Post history, which shows the tenant was left two notice cards to pickup the package.

The tenant testified that they never received any notice cards from Canada Post. The tenant stated they check their mail regularly. The tenant stated that their mailbox gets

lots of unsolicited junk mail and it is possible that the notice card got mixed with this. The tenant stated that they were surprised when they got the letter to vacate the premises and ask the landlord about the Notice and they were provided a copy at that time, which they filed a dispute.

The landlord testified that on August 10, 2021, the tenant physically and verbally assault their staff when they attended the tenant's rental unit to investigate a noise complaint they received from the tenant and to determine if the tenant had painted the rental unit contrary to the tenancy agreement.

Filed in evidence is a copy of an email from CL to the landlord, dated August 10, 2021, at 1:22pm, incident report of assault, which I have copied in part. I have redacted the name for privacy reasons.

He met us at the door and demanded to know who we were, and wanted to have our business card, neither of us had any on-hand but we were both wearing our ID badges and stated who we were. He let us in and continued to be rude and abrupt, cutting us off on numerous occasions as well as being verbally abusive towards both [REDACTED] and me. At one point I let him know that he was being abusive and that he could not talk to either of us that way, he complied, but soon went back to being abusive. I tried to let him know that he could not talk to us that way as we had not been rude to him at all. He then told us to get out. I tried to talk more, and he just kept telling us to get out. I guess we were not leaving quickly enough for him as he pushed me towards the door, he then proceeded to let me know that I would be fired (at this point I had already left his apartment). I said fine. And with that we left.

[Reproduced as written]

The landlord testified that the tenant painted the rental unit without their consent and then the tenant put a can of paint down the garbage shoot and paint went all over the shoot, garbage can, and basement floor.

DB witness for the landlord testified that they attend the rental unit on August 10, 2021, with a colleague to inspect the rental unit to determine if the tenant had painted the premises and to investigate the noise complaint of the tenant. DB stated that the tenant was being verbally abusive towards them, and the tenant used two hands and pushed their colleague on the chest to leave the premises.

The tenant questioned the witness if they actually saw them push the other person. The witness stated multiple times that they had seen the tenant push their colleague.

The tenant questioned the witness, do you remember the exact time this incident occurred? DB stated they do not remember the exact time; however, said it was during the inspection on August 10, 2021.

The tenant asked the witness what the colour of the paint they used to repaint the rental unit. The witness stated they thought it was a light pinkish/purply tone.

I note the tenant was very combative and argumentative with the answers the witness gave.

The landlord submits that they are a non-profit housing society, and they work with over 1,100 occupants in 16 buildings. The landlord stated they cannot allow their staff to be abused or assaulted. The landlord stated that the tenant is combative, and they have to have two staff members present at all times when dealing with the tenant. The landlord seeks an order of possession.

The tenant testified that at no time did they lay a hand on the staff member. The tenant stated that they believe that the landlord staff was there for more than just an inspection of the paint. The tenant stated the landlord's witness is not credible because they do not recall the exact time of the alleged assault and the paint they used was a light grey, not a light pinkish/purple.

The tenant provided computerized log notes, which I have only referred to a portion of it this decision, which I find relevant to the issue of the allegation of pushing the staff member. I have redacted the names for privacy reasons.

I could not understand this person's wrongfulness. These people did not come here to look at the apartment or ask to change the colour of the baseboards. They came here to find something else. They have been sent here to blame me for an infamous case, but they did not find what they expected, so now they have to pick on something.

I just had no more with their drama and all these insinuations, so I asked them to go.

Both refused to leave; I had to repeat myself again and even insist on their departure.

[redacted] was the first to comply with my request, and the gentleman, I think his name is [redacted], refused to leave the apartment and started to invoke all kinds of motives.

I cut him shortly insisted on going out of the place. Finally, he complied with my request, and he moved to word the entrance door.

When I try to close the door behind him, he blocks the door with his foot and starts to make all kinds of accusations. I made it clear that I was not interested in his criticism and I asked again to removed his foot from the door frame.

[Reproduced as written]

The tenant testified that the paint in the rental unit was in poor condition, and they sent the landlord many requests to be allowed to paint. The tenant stated the landlord did not respond so they painted the rental unit, without written permission of the landlord.

The tenant denies that they caused the damage from paint being put down the garbage shoot. The tenant stated that paint can they used, was fully empty when they put it down the garbage shoot. The tenant stated that the paint that caused the damage was an oil base paint and a different colour than what they had used.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

In this case, I am satisfied that the tenant was served with the Notice by registered mail and was deemed to have received the Notice on August 16, 2021, under the Act; however, the deemed service provision under the Act can be rebuttal. I am satisfied that the tenant was checking their mail regularly and did not find any notice card in their mailbox, I find it possible that the notice card could have got mixed with other unsolicited items such as advertisement flyers. The tenant did later receive a copy of

the Notice and filed their application requesting more time which was before the effective date of the Notice. Therefore, I allow the tenants application for more time to dispute the Notice.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case, I am satisfied that the tenant interfered with the landlord lawful right to inspect the rental unit and to investigate the complaints of the tenant regarding noise. The landlord's staff was inspecting the rental unit on August 10, 2021. While I accept the tenant did not like "their drama and all these insinuation"; however, the tenant did not have the right to ask them to leave until they had finished their inspection. The tenant could have could have ignored any comments that they did not agree with or left the premises while the inspection was completed.

Further, the written submission of the tenant supports that they "insisted on their departure", I find it more likely than not that the tenant was frustrated or upset when the landlord staff was not moving "quickly enough" that they were pushed by the tenant. This was supported by the written email of DL and by the landlord's witness DB who I found was credible as they were forthright with their answers, simply because they did not know the exact time, or the shade of paint does not mean they are not credible on this issue. DB at all times maintained the position that at the inspection on August 10, 2021, that they saw the tenant push their colleague. Where the tenant's behaviour at the hearing was that of a bully, especially when they did not like the answers given by DB.

I find at no time should the landlord or the landlord's staff be in a position that they are verbally abused or physically assault. I find the Notice is valid and remains in full force and effect. The Notice complies with section 52 of the Act.

As I have ended the tenancy based on this incident, I find it not necessary to consider the balance of the allegation listed in the Notice that are related to painting the rental unit or damage caused by paint.

As the landlord have accepted occupancy rent for the month of February 2022., I find it appropriate to extend the effective vacancy date in the Notice to February 28, 2022, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **February 28, 2022, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant not entitled to recover the filing fee from the landlords.

As the landlord was successful with their application, I find the landlord is entitled to recover the filing fee from the tenant. I authorize the landlord to keep \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, is dismissed.

The landlord is granted an order of possession. I authorize the landlord to deduct the amount of \$100.00 from the tenant's security deposit in full satisfaction of this award.

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: February 2, 2022

Residential Tenancy Branch