



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding domus management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LAT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 17, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated December 10, 2021 (the “Notice”)
- For an Order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For authorization to change the locks to the rental unit

The Tenant appeared at the hearing. The Agent for the Landlord (the “Agent”) appeared at the hearing. 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 parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the dispute of the Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package and Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence. The

Tenant said they cannot open the video files; however, the Tenant said they are not disputing admissibility of the video files and therefore I have considered them.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary and video evidence submitted as well as all oral testimony of the parties. 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 February 01, 2017, and was for a fixed term ending February 28, 2018. Rent at the start of the tenancy was \$1,000.00 due on or before the first day of each month. The Tenant paid a \$500.00 security deposit and \$500.00 pet damage 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 the Agent. The Notice has an effective date of January 31, 2022. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the Tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
2. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord.
3. Breach of a material term.

The details of cause on the Notice state:

Continued breach of 'Section 17: Conduct' of Tenancy Agreement.

A breach letter for multiple infractions was served to [the Tenant] on December 02, 2021, warning him to cease threatening or belligerent behaviour or written communications.

On December 8, 2021, after receiving the breach letter, he continued sending numerous emails to the landlord's email account with inappropriate and offensive images and vulgar language using multiple email accounts, in doing so, the tenant demonstrated a conscious intent to taunt and harass the landlord. As a result of his actions, he has breached a material term of his tenancy in less than a week of receiving the breach letter from landlord.

The Tenant did not take issue with the form or content of the Notice when asked.

The Agent testified that the Notice was posted to the Tenant's door December 10, 2021, and the Tenant did not dispute this.

The Agent summarized the reason for issuance of the Notice. The Agent testified about an interaction they had with the Tenant at the rental unit on November 08, 2021, which is captured on video and in evidence before me. The Agent testified that there has been an ongoing issue of a strong offensive odor emanating from the rental unit that other tenants have complained about. The Agent testified that the November 08, 2021 incident occurred when the Agent attended the rental unit to tell the Tenant to keep the front door closed. The Agent testified that the Tenant responded with a "belligerent tirade" as shown in the video. The Agent testified that the November 08, 2021 incident was addressed in a breach letter to the Tenant.

The Agent testified that, after the November 08, 2021 incident, they did not speak to the Tenant in person and communicated with the Tenant through email. The Agent testified that issues with the Tenant continued including an offensive odour coming from the rental unit, belligerent behaviour by the Tenant, threats from the Tenant and the Tenant leaving garbage in the hallway. The Agent testified that these issues were again addressed in a letter to the Tenant which included a warning that further breaches would result in the issuance of a One Month Notice. The Agent testified that the Tenant then engaged in a "harassment email campaign" in which the Tenant made obscene

and inappropriate comments. The Agent testified that they received over 1500 spam emails after the Tenant threatened to cause this very issue in an email on December 09, 2021. The Agent testified that the emails triggered the issuance of the Notice.

The Agent sought an Order of Possession effective April 30, 2022.

The Landlord submitted a video of the November 08, 2021 interaction between the Tenant and Agent. The Landlord submitted emails from the Tenant to the Agent.

The Tenant testified that everything stated by the Agent and sent by the Landlord is a lie. The Tenant testified that they live a quiet and private life in the building. The Tenant testified that they received an email from the Agent stating that they would be out on the street in the cold and said they cannot be nice to someone like that and they do not apologize for this. The Tenant testified that they have lived in the building since 2017 without a problem. The Tenant testified that everything was fine between them and the Agent until the Tenant asked the Agent to wear a mask in the building at which point the Agent made the Tenant's life difficult. The Tenant denied that they have ever left garbage in the hallway as claimed. The Tenant testified that it is them who has been harassed. The Tenant denied that there are offensive odours coming from the rental unit and testified that they have a cleaner who cleans the rental unit regularly and does a complete clean every December. The Tenant testified that they put the email from the Agent about the Tenant being out in the cold on the bulletin board "Hacksters" knowing what would happen and that they did this on purpose.

I asked the Tenant if they agree that the incident shown on the video submitted happened and the Tenant replied that if I have video of it obviously it happened. The Tenant agreed the emails in evidence from their own email address, which includes their name, are from them. The Tenant testified that the other emails are from others who did not like what the Agent was doing either. The Tenant testified that what they said at their door as shown in the video was said in frustration and anger. The Tenant acknowledged their language in interactions with the Agent was "horrible".

The Tenant submitted a three-page written statement authored by themselves.

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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...

- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord...

(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 to dispute the Notice pursuant to section 47(4) of the *Act*. I accept the testimony of the Agent that the Notice was posted to the Tenant's door December 10, 2021, because the Tenant did not dispute this. I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice December 13, 2021. The Application was filed December 17, 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 have viewed the video of the November 08, 2021 interaction between the Agent and Tenant. I find the Tenant's behaviour completely inappropriate. The Tenant swears at the Agent, calls the Agent inappropriate names, threatens to punch the Agent and makes an arm gesture towards the Agent. I also find that the Agent could have handled the situation better and do find some of the things said by the Agent to be inappropriate as well. However, it is not the Agent's behaviour that is at issue before me. It is the Tenant's behaviour that is at issue before me. Further, I do not find that the Agent's behaviour justifies the Tenant's behaviour in any way.

I have read the emails from the Tenant to the Agent. I have only focused on the emails that the Tenant acknowledges are from them. I find the language used in the emails derogatory and unacceptable. The emails I note in particular have the following date and time stamps:

- Thursday, December 9, 2021 at 10:11 AM
- Thursday, December 9, 2021 at 10:20 AM
- Thursday, December 9, 2021 at 10:42 AM
- Thu, Dec 9, 2021 at 10:39 AM
- 9 December 2021 at 09:49
- Mon, Jan 24, 2022 at 5:37 PM

Again, I acknowledge that the Agent sent an inappropriate email to the Tenant at email addresses the Agent suspected were being used by the Tenant (see email date and time stamped Wednesday, December 8, 2021 at 10:59 AM). The Agent claimed they sent this inappropriate email to bait the Tenant in order to confirm the email addresses were being used by the Tenant. Regardless of why the Agent sent the email, the email is inappropriate and I acknowledge this. However, the inappropriate email from the Agent did not justify the Tenant's inappropriate emails outlined above. Poor behaviour by the Agent does not entitle the Tenant to also behave poorly. The Tenant could have chosen to address their issues with the Agent in a way that did not involve sending rude and derogatory emails.

The Tenant acknowledged at the hearing that the language they used towards the Agent was inappropriate and seemed to suggest that this acknowledgement excused it.

I do not find that behaving in the way shown in the video and sending the emails noted above can be excused by later acknowledging it was wrong.

I find that the Tenant's behaviour as shown in the video of the November 08, 2021 incident and the Tenant's emails outlined above constitute a significant interference with, or unreasonable disturbance of, the Agent and thus the Landlord. I find the behaviour shown in the video to be both a significant interference and unreasonable disturbance because it involves the Tenant threatening the Agent with violence prior to the Agent doing or saying anything inappropriate. I find the emails outlined above to be an unreasonable disturbance because the Tenant sent at least six emails over the course of two days using inappropriate and derogatory language. I find the emails unreasonable because of the number and the use of inappropriate and derogatory language that is simply unacceptable and not justified by anything the Agent might have said. There were other reasonable avenues the Tenant could have chosen to deal with their issues with the Agent. There was no need for the Tenant to send the emails they did.

Given the above, I find the Landlord has proven the grounds for 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 at 1:00 p.m. on April 30, 2022.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022. 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: March 30, 2022

Residential Tenancy Branch