



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON DEVELOPMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 17, 2022, by the tenants to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on January 7, 2022, to have the landlord provide services or facilities required by the tenancy agreement or law, to allow access to the unit or site for me and/or my guests and to recover the cost of the filing fee.

This matter commenced on February 22, 2022, and an adjournment was granted. The interim decision should be read in conjunction with this Decision.

On March 28, 2022, both parties appeared and gave a firm testimony.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. I note the advocate stated that the tenant’s only received one copy of the evidence, and both should have received separate packages; however, clearly both tenants knew the evidence that was to be considered. I do not find this prejudice to the tenants; I will allow all evidence of both parties to be considered.

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 the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on August 1, 2014. Rent in the amount of \$1,950.00 was payable on the first of each month. A security deposit of \$837.50 was paid by the tenants.

In this case, there have been 5 prior hearings between September 2019 and January 2022, relating to notices to end the tenancy.

At the most recent previous hearing held on December 9, 2021, the parties entered into a settlement agreement, that agreement reads as follows.

The parties reached the following full and final settlement agreement during the hearing:

1. The One Month Notice to End Tenancy for Cause of July 27, 2021 is cancelled and of no force or effect.
2. The Tenants agreed to comply with all current bylaws, and any new bylaws that may be enacted.
3. The Tenants, and two agents of the Landlord (M.J. and P.J.), will attempt as best as possible to avoid any interaction.
4. Any necessary communication between the Landlord and the Tenants shall be through D.D., an agent for the Landlord.
5. M.J. and P.J. are still permitted to serve documents to the Tenants in any manner in accordance with the *Act*; however, they will attempt as best as possible to avoid personal service.
6. Both parties agreed to split the \$100.00 filing fee. The Tenants are permitted to withhold **\$50.00** from the next month's rent in satisfaction of this debt.
7. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute with respect to the Notice.
8. Both parties agreed that they will attempt to move forward in an amicable manner to ensure a successful tenancy.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of the settlement of these disputes.

On January 7, 2022, the tenants were served with the Notice subject to this hearing.

The reasons stated in the Notice are:

Tenant or a person 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
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

Counsel for the landlord submits that the tenants did not comply with the settlement agreement made on December 9, 2021, and as a result of that breach the landlord issued the Notice as the fulfilment of these conditions were not met by the tenants and they had a right to issue a new notice to end tenancy alleging the same issues in the July 27, 2021, notice to end tenancy.

Counsel submits that on December 30, 2021, the tenant SH breached clause three of the settlement agreement as they made no attempt to avoid an interaction with MJ. Counsel submits the interaction was either planned by the tenant as the tenant was recording the conversation or they had used the opportunity to engage with MJ. Counsel submits SH was yelling at MJ in the hallway and threatening them with a lawsuit.

Counsel submits that the tenants also breached clause four of the settlement agreement as any necessary communication must go through the landlord's agent DD, which the tenants only communicated their concerns to DD hours later.

MJ witness for the landlord testified that on December 30, 2021, that there was an unprecedented snowfall and they were not even supposed to be working; however, staff were having issues getting to the building. MJ stated that they had staff and a tenant working to clear the sidewalks that were on city property, and they have to be done by 10am in the morning, which they were doing their best. MJ stated that the strata does not have a time that the strata property must be cleared of snow.

MJ testified that it was around 1:00 – 1:30 pm that they passed the tenant in the hallways and the tenant asked them about shovelling the driveway. MJ stated that they

responded to the tenant that they are dealing with the issue, and it should be completed by 6pm. MJ stated that they did not respond to the tenant when they indicated that it was dangerous or a lawsuit.

The Advocate for the tenants stated that the settlement agreement was only entered into at the hearing, because the landlord's had not served their evidence on the tenants in accordance with the Rules of Procedures, and there were other problems with their landlord's witness attending. The Advocate stated that they agreed that the July 27, 2021, notice to end tenancy would be cancelled and they had no control over how the Arbitrator wrote the wording in that settlement agreement; however, it seems by the wording that the tenants did something wrong, which was not the case. The advocate stated they believe the landlord is using the wording in an attempt to reactive the July 27, 2021, as they were not prepared for the December 9, 2021, hearing.

The Advocate submits that on December 30, 2021, there was a very large snow fall and the tenant was concerned about the safety of the walkways, and driveway.

The Advocate for the tenants stated that simply because the tenant asked MJ when they could expect the snow to be removed from the driveway in passing in the hallway and stating that it was pretty dangerous outside, and that someone could have a lawsuit, cannot be considered a threat or a violation of the agreement. The Advocate stated that clause 3 does not state in what circumstance it would be reasonable for the tenant to have interactions. The settlement agreement simply says they will attempt as best possible to avoid interaction. The advocated stated that there may be times when necessary such as this unprecedented snowfall.

The Advocate submits that although clause 4 of the settlement agreement states, necessary communication is to go through the landlord's agent DD; however, DD does not respond to communication they have sent to them on behalf of the tenant, nor did they respond to the tenant's concern on December 30, 2021, as the first communication DD sent was only after they had issued the Notice.

The tenant SH testified that since the landlords have been making attempts to end their tenancy based on false allegation, they always have their audio recorder turned on when leaving their rental unit or when entering the building to protect themselves.

The tenant SH testified that when they left for work at 6am the exit ramp to the driveway had not yet had the snow removed and when they returned back to the

building at approximately 1:00 pm the ramp still had not had the snow removed, and the compacted snow was very slippery, and they almost slid into the side of the gate.

The tenant testified that they were heading to their rental unit when MJ was passing in the hallway and simply asked them when the snow would be removed. The tenant testified that they did not yell or threaten MJ in anyway, that they were concerned with safety as it would be a liability if someone would fall and break a hip.

Filed in evidence is an audio of the interaction on December 30, 2021, which the conversation goes as follows,

“[Tenant]Are you guys going to shovel the back driveway by chance? {M.J] unable to hear. [Tenant] Should have been done by 6am, when I left for work, it is pretty dangerous someone is going to have a lawsuit”

[Reproduced from audio]

Analysis

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

In this case, I must determine if the tenants breached the settlement agreement made on December 9, 2021, and if so did the landlord have the right to issue the Notice.

The settlement agreement on December 9, 2021, clauses three and four read as follows

3. The Tenants, and two agents of the Landlord (M.J. and P.J.), will attempt as best as possible to avoid any interaction.
4. Any necessary communication between the Landlord and the Tenants shall be through D.D., an agent for the Landlord.

I am not satisfied that the tenants have breached clause 3, simply because in the afternoon on December 30, 2021, the tenant asked MJ about when the snow would be removed from the driveway after a large snow fall occurred.

The settlement agreement does not say absolutely no contact or communication whatsoever. It only says that all parties would attempt as best possible to avoid any interaction. I do not find the audio recording that the tenant was yelling at MJ or making any personal threats, that simply is not supported. This was a very short interaction as

the tenant was returning to the rental unit and I find it was a reasonable question asked, given the current conditions at the time.

While I accept clause 4 states any necessary communication between the landlord and tenant shall be through DD, an agent of the landlord, this was done by the tenants later in the day. DD never responded to the tenants on that day or within a reasonable time.

Further, I find it would be unreasonable for the landlord's to now want to raise the issues that were in the July 27, 2021, simply because the tenant asked such a basic question of MJ, when they were in the hallway going to their own unit. This is extremely heavy handed especially when the tenant may have valid concerns.

I find the wording "will attempt as best possible to avoid any interaction", ambiguous; however, I find it cannot be interpreted that to mean, no communication or interaction whatsoever.

Based on the above, I do not find the tenants breached the settlement agreement. Therefore, I find the landlord was not entitled to issue the Notice. Therefore, I find it appropriate to cancel the Notice.

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee. I authorize the tenants a onetime rent reduction from a future rent payable to the landlord in the amount of \$100.00.

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: March 30, 2022

Residential Tenancy Branch