



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shaughnessey Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNC, OLC, RP, LRE, LAT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70; and
- Authorization to change the locks to the rental unit pursuant to section 31.

The tenant attended the hearing, and the landlord was represented at the hearing by building manager, KH. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Both parties advised they had no issue with timely service of documents.

Preliminary Issues

The landlord named on the tenancy agreement was not the same landlord as named on the tenant’s application for dispute resolution. The tenant had named the building manager as landlord instead. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, the landlord’s name was amended on the tenant’s application for dispute resolution to match the landlord’s name on the tenancy agreement. The proper name of the landlord is reflected on the cover page of this decision.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. Aside from the tenant's application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related to the primary one before me. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would only refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity, and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on October 1, 2020, with rent set at \$1,050.00 per month payable on the first day of each month. A security deposit of \$525.00 was collected from the landlord which the landlord continues to hold.

On January 20, 2022, the landlord posted a 1 Month Notice to End Tenancy for Cause to the tenant's door. A copy of the notice to end tenancy was provided as evidence. The notice states that the reason for ending the tenancy are as follows:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

Under "details of cause", the landlord wrote:

On Dec. 28 for the tenant's request we entered with a plumber to fix the heat. We both noticed a gun on the nightstand, took a picture and reported to the police. Besool (sic) on the picture they send officers to watch his unit. Next day with a search warrant & SWAT team arrived. They broke his door and spent 6 hours in the unit. Other tenants and we are including myself are very scared at him. 2 tenants moved out because of his verbal abuse and harassment. He is keep harassing me. Verbely abusing me and other tenants. In email disrespect me and 2 property managers.

(Reproduced as written)

The landlord testified that she got a couple of complaints from the tenants living directly above the tenant about him banging on the ceiling. They gave the landlord a complaint letter on June 4, 2021 and gave the landlord a notice to end tenancy on July 29th. The landlord testified that the reason for leaving was due to 104's behaviour.

The tenant has been abusing and harassing the landlord. She is now on medication and the landlord has always treated the tenant professionally. The tenant calls her names: delusional, extremely toxic, miserable a tyrant, dangerous, crazy and dominant.

During the hearing, the landlord then began giving confusing and difficult to follow testimony regarding the tenant. According to the landlord, she and the tenant had a conversation on June 29th. This conversation revolved around a smoke detector, ants and a bird feeder. Although I asked the landlord to clarify how this relates to the reasons stated for ending the tenancy on the notice to end tenancy, the landlord went on to tell me that the tenant hates her and wants her fired.

The landlord made specific references to complaint letters sent to her by other tenants in the building. The tenant from 204 states *"every time we make a little noise he is banging on the ceiling and yelling swearing loudly"*. The tenant in 205 does not identify this tenant in his complaint but says *"that guy seemed aggressive"*. The tenant in 102 says they feel unsafe and worried because to police came to this tenant's apartment.

The landlord testified that another tenant from 202 wrote a 5-page letter complaining about the tenant's behaviour. That tenant moved out on December 31, 2021, and it was because of this tenant. In the tenant's notice to end tenancy, the tenant writes, *"I just can't stand this situation anymore with the [tenant] and his verbal abuse to everyone. I*

have never been bothered so much to “shut my mouth up” in my own place because he’s “not in the mood”.

The landlord testified that on December 28th, she and a technician went into the tenant’s unit to fix a heat issue the tenant complained about the day before. The tenant was not home at the time the landlord and technician came. While there, the landlord saw what she believed to be a gun on the tenant’s nightstand. The landlord took a photo of what she believed to be a gun, called the police and the police attended with a SWAT team and were there for approximately 6 hours. The “gun” turned out to be a BB gun however the landlord gave hearsay evidence saying she was told that the BB gun could be used in a lethal manner. The landlord testified that she is scared the tenant will shoot her. The verbal abuse from the tenant is so bad that her mental state is degraded.

The landlord’s witness testified that she is of the opinion that the tenant is a misogynist. She has spent hours comforting the landlord due to his abuse and he gives her chills to her spine.

In cross exam, the tenant asked why the landlord served him with another notice to end tenancy identical to the one already served upon him, scheduled for a future hearing. The landlord responded that she would continue to serve the tenant with eviction notices every month until she finally gets an Order of Possession.

The tenant gave the following testimony. The incident on December 28th was based on an illegal entry into his unit. There was a previous arbitration whereby the arbitrator lectured the landlord on not entering the tenant’s unit without proper notice. The tenant testified that the landlord came into his unit while he was away after sliding a letter under his door stating they would be entering in 24 hours. Service by sliding under the door is improper and if it were properly served by posting to the door, the entry must be delayed by 3 days for service to have been effected. In any event, the “gun” found by the police was a pellet gun legally purchased at Canadian Tire for the tenant’s nephew.

The landlord was seen telling other residents of the building that the tenant has guns and suffers from mental issues. She has destroyed and manipulated the tenant’s relationship with many of the other tenants. The tenant has the support of many of the building’s residents. The tenant acknowledges calling the landlord a bully and a tyrant and describes her as incompetent. When he first moved in, the tenant tried to “bite his tongue” about issues with the building such as knocking pipes and noisy neighbours, however when he did send complaints, they were polite and non-confrontational. The tenant acknowledges that the landlord sent warning letters to the residents living above

him, but the landlord has chosen to focus on evicting him. While he doesn't mind noise during the day, the people above him run around all night and are noisy between 1 and 4 in the morning. The tenant acknowledges banging on his ceiling to let the neighbours above him know that they are crashing and banging around during the wee hours of the night. He told the neighbour in 204 to shut up at 4:00 in the morning and later that week that neighbour apologized to the tenant for the noise they made.

Analysis

Based on the undisputed testimony of the landlord, I find the tenant was served with the 1 Month Notice to End Tenancy for Cause on January 20, 2022. The tenant filed his application to dispute the notice the following day, on January 21st in accordance with section 47 of the *Act*.

Rule 6.6 of the *Act* states that a landlord bears the onus to prove the reasons they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy. The standard of proof is on a balance of probabilities which means it is more likely than not that the facts occurred as claimed.

In the notice to end tenancy before me, the landlord claims that the tenant or a person permitted on the premises by the tenant:

- **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; or
- put the landlord's property at **significant** risk.

Under "*details of cause*", instructions are provided to the landlord which state: *Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.*

The "details of cause" appear to be twofold. The first part refers to the incident of December 28th where the police were called due to the landlord's discovery of a fully legal pellet gun in the tenant's rental unit. The second part will be dealt with later in this decision.

First, I find the entry into the tenant's rental unit on December 28th was not made in accordance with section 29 of the *Act*. If the landlord provided the 24 hours notice of entry by sliding it under the tenant's door, such notice is not provided in accordance with the *Act*. The only methods of service allowed are found under section 88 of the *Act* which the landlord ought to be familiar with, given her occupation as a building manager. Even if the landlord were to provide notice by posting to the tenant's door

under section 88(d), it would be deemed received three days later, pursuant to section 90 of the *Act*. In such a scenario, the landlord could only enter the tenant's unit 72 hours later instead of 24 hours.

Nonetheless, the landlord has failed to demonstrate to me how the events of that day reflect a **significant** interference or **unreasonable** disturbance to another occupant or the landlord. It appears to me that the disturbance to the other occupants of the building was initiated by the landlord when the police were brought in. The tenant was within his legal right to have a pellet gun in his own unit; there is no evidence before me that this tenant ever pointed it at another occupant or the landlord or even threatened to use it on another person.

Nor do I find the event of December 28th prove the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The entry into the tenant's unit on that date was made contrary to section 24 of the *Act* and tenant wasn't even home when the landlord discovered the pellet gun. I have already found the pellet gun to be a legal acquisition so the landlord's argument that the pellet gun **seriously** jeopardizes the health, safety or lawful right of the landlord or another occupant I find to be unsubstantiated. I put little weight to the landlord's testimony that somebody told her the pellet gun could be altered to become lethal, given that the identity of that source and the credentials of the person supplying her with that information is unknown.

Lastly, the landlord provided little if any testimony regarding a **significant** risk to the landlord's property caused by the tenant. Most of the landlord's testimony focussed on the stress the broken relationship with the tenant has caused to the landlord. I do not find the tenant posed a significant risk to the property.

The second part of the "details of cause" provided by the landlord states: *Other tenants and we are including myself are very scared at him. 2 tenants moved out because of his verbal abuse and harassment. He is keep harassing me. Verbely abusing me and other tenants. In email disrespect me and 2 property managers.*

(reproduced as written)

I find the landlord has not provided the "what, where and who caused the issue and included the dates/times and names" as required on the form. In order for a tenant to successfully dispute the allegations of wrongdoing made by the landlord, the tenant has to be served with the details of why the landlord seeks to end the tenancy. As the form states, "An arbitrator may cancel the notice if details are not provided".

The landlord had the ability to provide a detailed description that includes dates and times of the allegations of wrongdoing but failed to do so. I find that natural justice would be compromised if the landlord were to simply provide the details of the reasons to end the tenancy as evidence **after** the tenant has filed an application to dispute the notice. The tenant must be given the opportunity to understand and either accept or dispute the allegations made against him. Without providing these necessary details,

the tenant is left having to “fill in the blanks” on his own. I find the “details of cause” to be insufficient and I cancel the notice for this reason.

Lastly, the Merriam-Webster dictionary defines **significant** as, “*having or likely to have influence or effect, of a noticeably or measurably large amount*”. **Unreasonable** means, “*exceeding the bounds of reason or moderation*”. While I find the emails sent to the landlord and her colleagues to be somewhat offensive and disrespectful as the landlord claims; I do not find them to be a significant interference or unreasonable disturbance to the landlord. The tenant has a right to express his concerns regarding the management of the building in writing.

In conclusion, I find the landlord has not provided sufficient evidence to satisfy me the tenancy should end for the reasons stated on the notice to end tenancy and I cancel it. The tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant’s application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with section 72, the tenant may reduce a single payment or rent due to the landlord by \$100.00.

Conclusion

The notice to end tenancy is cancelled. The tenancy shall continue until it is 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: April 26, 2022

Residential Tenancy Branch