Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNC, FFT/CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's first One Month Notice to End Tenancy for Cause (the "first One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. Cancellation of the Landlord's second One Month Notice to End Tenancy for Cause (the "second One Month Notice") pursuant to Section 47 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act;
4. Recovery of the first application filing fee pursuant to Section 72 of the Act; and,
5. Recovery of the second application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, DK, and the Tenant, MP, 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 personally served the first One Month Notice on January 7, 2022. The Tenant confirms receipt of the first One Month Notice. I find that the first One Month Notice was served on the Tenant on January 7, 2022 pursuant to Section 88(a) of the Act.

The Landlord personally served the second One Month Notice on February 24, 2022. The Tenant confirms receipt of the second One Month Notice. I find that the second One Month Notice was served on the Tenant on February 24, 2022 pursuant to Section 88(a) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package to the Landlord for the first One Month Notice via Canada Post registered mail on January 29, 2022 (the "first NoDRP package"). The Tenant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirm receipt of the first NoDRP package. I find that the Landlord was deemed served with the first NoDRP package on February 3, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package to the Landlord for the second One Month Notice via Canada Post registered mail on March 13, 2022 (the "second NoDRP package"). The Tenant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirm receipt of the second NoDRP package. I find that the Landlord was deemed served with the second NoDRP package on March 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant confirmed that he personally served the Landlord with his evidence on March 28, 2022. The Landlord confirmed receipt of the Tenant's evidence on March 28, 2022. I find that the Landlord was served with the Tenant's evidence on March 28, 2022 in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's first One Month Notice?
2. Is the Tenant entitled to cancellation of the Landlord's second One Month Notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
4. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
5. Is the Tenant entitled to recovery of the first application filing fee?
6. Is the Tenant entitled to recovery of the second application filing fee?

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 periodic tenancy began on May 31, 2017. Monthly rent is $1,404.50 payable on the last day of each month. A security deposit of $662.50 was collected at the start of the tenancy and is still held by the Landlord.

The first One Month Notice stated the reasons why the Landlord was ending the tenancy was because the Tenant has i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The effective date of the first One Month Notice was February 28, 2022. The Landlord provided further details of the causes to end this tenancy as:

> *Dec 14-2021 7:45 pm [Tenant] came upstairs to give rent. When I asked him if he had tenant insurance and if anybody will be visiting his suite (unit) as "always" met with opposition with his outbursts. His agression towards me as he answered. Exactly what he has done on October 23/21. June 2, 2020 vpd was called for similar incident (his fingers were in my fact). There have been many irrational, erratic outburst on several occasions. [Tenant] has been fairly warned about this. June 17/20 he was given a letter again but tells me he does not have to deal with it as he chooses not to. [Tenant] tells me police was called for parking not him.*

The second One Month Notice stated the reasons why the Landlord was ending the tenancy was because the Tenant has not done required repairs of damage to the unit and the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The effective date of the second One Month Notice was March 30, 2022. The Landlord provided further details of the causes to end this tenancy as:

> *Feb 7/22 Unit inspection was done approx. 5 pm. Feb 8/22 gave [Tenant] letter stating windows & ledges were extremely dirty & I would be doing a re-inspection Feb 18/22. In letter I stated if windows were not cleaned &*

> *maitance was not followed by Feb 18 all interior windows, I will be giving a 1 month notice. Feb 7 I went to bsmt unit approximately 4 pm as I looked at windows & inspected nothing was done & cleaned. [Tenant] approached me started shouting at me with his fingers again near my face & told me I was not allowed in his bsmt suite. [Tenant] had given me permission on Friday Feb 18 allowing me to inspect, which is stated on text message. When asked he said "Yes! [Tenant] aggressive behavor, shouting , yelling, which I said please step back, I felt very confused, disturbed and disided to leave. His volent aggression is out of control or I am not safe around [Tenant].*

The Landlord submits that the Tenant is always very vocal at her and he always answers her in outbursts. The Landlord stated the police were called on June 2, 2020 for one of the Tenant's behaviour outbursts. A police report uploaded by the Landlord states that this was a priority 3 call meaning – routine attention, no current threat to life or property. The initial remarks on the call were:

> *A/L is house COM owns house and lives upstairs*
> *Says approx. 10 minutes ago was speaking to her Tenant about something he shouldn't be doing…*
> *SOC started yelling at her and pointed his finger at her….COM quite upset says she feels in danger of the SOC and wants to speak to police*
> *No physical violence*

The assessment in the report was that the officer "*Spoke with both parties. Civil dispute only. Advised to deal with the Landlord Tenantcy [sic] Act.*" The Landlord uploaded a letter from someone who she said witnessed this exchange, but the Landlord did not invite her witness to provide testimony or an opportunity to be cross-examined at the hearing. The Landlord said the Tenant is argumentative and anything general discussed is taken out of context.

The Landlord testified that she has provided several letters to the Tenant about his yelling and screaming communication style. The Landlord directed me to her letter dated June 17, 2020 which specified the 'Expectations for Tenancy'. The Landlord reminded the Tenant about the shared common space in the residential property which is only the laundry room on Sundays from 9 a.m. to 7 p.m. The Landlord's letter also wrote her expectations around behaviour, noise levels and quiet enjoyment. The letter ends by the Landlord telling the Tenant that she will communicate '*via cellular or in person (verbal) and I do not find it suitable to only use one mean of communication. A*

monthly inspection will be required, and the first date of inspection will be June 22, 2020 at 5 p.m.'

The required repairs the Tenant needs to address based on the second One Month Notice is that the Tenant must clean the window ledges which are dirty with flies and mould. The Landlord did not upload her breach letter which she said was dated March 18, 2022 into documentary evidence. She testified that when she went into the rental unit to re-inspect the clean up job, the Landlord stated the Tenant did not comply with her cleaning request.

The Landlord mentioned multiple times that the Tenant is aggressive towards her. She said she asked him one time to turn off lights in his rental unit as he had five lights on, and the Tenant just sweared at her. The Landlord writes letters to the Tenant for various reasons, e.g. communication style, not canceling the notice to end tenancy, reiteration of work done in the unit X 2, work around a living room window, lights left on in unit, discussion of how rent can be raised for overuse of services, kitchen work needing to be done, throwing glass jars in garbage and recycling X 2. Both parties uploaded streams of text messages between them which are along the same stream as the Landlord's correspondence.

The Tenant testified that it is untrue that he swears and yells at the Landlord all the time. The Tenant's evidence about the police incident was when he started working from home, his office gave him a pickup truck to use. He initially parked it in the driveway, but the Landlord did not want him to park it there, so he moved it to the street. The Landlord told him that she did not want it parked in the front of her house either, but the Tenant refused to move it from the street location. The Tenant said they argued outside about this situation. The Landlord was on her patio and the Tenant was standing five or six steps up to the patio, he was not at the same level as the Landlord but lower down. The Landlord called the police. When the police showed up, the officer spoke to both parties and they told the Tenant that he is legally allowed to park his truck on the street. The Tenant testified that he heard the Landlord arguing with the police officer about the parking situation. Eventually, the Tenant stopped bringing the work truck home, as a neighbour spoke to him and told him it was difficult to see on-coming traffic when they were backing out of their driveway.

The Landlord is seeking an end of tenancy for cause, and the Tenant is seeking to cancel both One Month Notices, and an Order for the Landlord to comply with the Act, Regulation and tenancy agreement.

Analysis

The standard of proof 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 for this matter. It states:

Landlord's notice: cause

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, or

…

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

(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;

…

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

…

The Tenant was served with the first One Month Notice on January 7, 2022, and the second One Month Notice on February 24, 2022. Both One Month Notices complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on January 16, 2022 and March 3, 2022, both within the 10 days after the date the Tenant received the respective One Month Notices.

The Landlord says the Tenant is aggressive and has behavioural outbursts that are not conducive to their Landlord-Tenant relationship. The almost two year old police report uploaded by the Landlord says there was no physical violence and that this was a civil dispute only. The report advises to deal with the RTB. The Landlord appears to want to have a very involved and directive management of her tenancy. The Tenant seems set against having the Landlord that involved in his daily living activities. I find that the Landlord, on a balance of probabilities, has neither established that the Tenant has significantly interfered with or unreasonably disturbed the Landlord of the residential property, nor has the Tenant seriously jeopardized the health or safety or a lawful right or interest of the Landlord. I find the Landlord has not established cause to end this tenancy pursuant to Section 47(1)(d) of the Act.

RTB Policy Guideline #1 discusses Landlord and Tenant – Responsibility for Residential Premises. The Landlord is responsible for ensuring that rental units …, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The Landlord is concerned with the cleanliness of the Tenant’s window tracks and sills. The Tenant uploaded pictures into documentary evidence, but the window tracks and sills appear clean. The Landlord uploaded pictures of window tracks that seem darker, possibly evidence of dirt or mould.

Policy Guideline #1 does specify that the "*Tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.*" As a reminder, the Tenant's responsibility falls under Section 32(2) which states, "*A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*" I find that clean is subjective, and what is clean to the Tenant may not be clean to the Landlord. I find, based on all the documentary evidence uploaded by the parties, that the window ledges in the rental unit do not appear to be excessively dirty. There was no evidence that the darker spots were mould. I do not see any evidence that health, safety and housing standards are infringed. I find the Landlord has not established cause to end this tenancy pursuant to Section 47(1)(g) of the Act.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement for breaching a material term of that agreement. The Guideline states:

> *To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*
>
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*
> - *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> - *that if the problem is not fixed by the deadline, the party will end the tenancy.*
>
> *Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.* (emphasis mine)

The Landlord must inform the Tenant in writing about what term in their tenancy agreement the Tenant has breached. Neither party uploaded a tenancy agreement, and the Landlord did not specify which term in their agreement had been breached. I find

though that the Landlord has not informed the Tenant that he has breached a material term of their tenancy agreement. The Landlord wants to rely on a letter dated March 18, 2022, but the Landlord has to establish cause first before issuing the One Month Notice which was served on February 24, 2022. The Landlord has not specified what that term is, how it is material, and the importance of the term in the overall scheme of the tenancy agreement. Accordingly, I find the Landlord has not proven cause to end this tenancy, on a balance of probabilities, pursuant to Section 47(1)(h) of the Act.

Section 28 of the Act is worth mentioning here, it states:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

RTB Policy Guideline #6 assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

> *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. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*
>
> *…*

> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

The parties' relationship is strained due to personality conflicts, and varied expectations of the tenancy relationship and how it should work. The Tenant is entitled to reasonable privacy and freedom from unreasonable disturbance. I remind the Landlord that inspections, although can be monthly, they must have a specific purpose and be reasonable. Section 29(1) of the Act sets out the parameters for when or how the Landlord may enter the rental unit. I Order the Landlord to comply with Sections 28 and 29 of the Act, and remind the Landlord that the rental unit is for the Tenant's exclusive occupation.

I find that the Landlord has not proven any of the causes submitted in the first or second One Month Notices. I cancel both notices, and the tenancy shall continue until ended in accordance with the Act.

As the Tenant is successful in both of his claims, he is entitled to recovery of the application filing fees paid to initiate the dispute resolution process. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold $200.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's first One Month Notice is granted.

The Tenant's application to cancel the Landlord's second One Month Notice is granted.

The Tenant may withhold $200.00 from next month's rent to recover both application filing fees paid to initiate the dispute resolution process.

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: April 27, 2022

Residential Tenancy Branch