



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 13, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Landlord’s agent (“KL”), the two Tenants (“DP” and “DK”) and the Tenants’ advocate (“ID”) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

ID stated the Tenants served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord in-person on February 8, 2022. KL acknowledged the Landlord received the NDRP. I find the Landlord was served with the NDRP by the Tenants pursuant to the provisions of section 89 of the Act.

ID stated the Tenants served their evidence on the Landlord in-person on April 8, 2022. KL acknowledged the Landlord received the Tenants’ evidence. I find the Landlord was served with the Tenants’ evidence pursuant to the provisions of section 88 of the Act.

KL testified the Landlord served its evidence on the Tenants by registered mail on April 6, 2022. KL submitted a copy of the Canada Post receipt and tracking number for service of the evidence on the Tenants. I find the Tenants were served with the Landlord’s evidence pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Correction of Name of an Applicant

At the outset of the hearing, I noted that the name of the Landlord provided by the Tenants in the Application was an acronym of the Landlord while the name of the Landlord stated in the 1 Month Notice was the full name of the Landlord. KL testified the name of the Landlord stated in the 1 Month Notice was the legal name of the Landlord. The parties requested I amend the name of the Landlord in the Application to state the legal name of the Landlord.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“RTB Rules”) states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to Rule 4.2 of the RTB Rules, and with the consent of the parties, I amended the Application to replace acronym for the Landlord’s name used by the Tenants in the Application with the legal name of the Landlord.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- If the Tenants fail in their claim for cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the current tenancy commenced on December 1, 2010. Although the market rent of the rental unit is \$701.00 per month, after the application of a subsidy, the Tenants are required to pay \$375 on the 1st day of each month. KL

acknowledged DP paid a security deposit of \$397.50 to the Landlord at the time of the original tenancy with DP alone. KL confirmed the deposit is being held in trust on behalf of the Tenants.

KL submitted a copy of the 1 Month Notice into evidence and stated it had been served on DP by registered mail on January 13, 2022. KL submitted a copy of the Canada Post receipt and tracking number for service of the 1 Month Notice to corroborate her testimony. I find the Landlord served the 1 Month Notice on the Tenants in accordance with the provisions of section 88 of the Act.

The 1 Month Notice listed one cause for ending the tenancy as follows:

Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

The 1 Month Notice provided the following details regarding the cause for ending the tenancy:

On approximately November 26th, 2021, it is reported that [DK] intercepted and stole another tenant's prescribed medication delivery with a suspected intent to sell the medication. This has seriously impacted the safety and physical well-being of the tenant expecting a medication delivery. This incident is consistent with other suspicious behaviors that affect quiet use and enjoyment, safety and physical well-being of the wider community of tenants who are seniors and/or people with disabilities.

KL stated that, although there have been a number of complaints from other tenants of the building ("Premises") over a lengthy period of time, service of the 1 Month Notice on the Tenants was prompted by an incident ("Incident") involving the disappearance of a controlled pharmaceutical medication ("Medication") that was delivered to the Premises for another tenant ("JN") on November 26 2021. Further details on the Incident appear below.

KL stated a tenant ("Resident A") of the Premises provided a verbal report of suspicious activities by DK. A staff member documented this information and submitted a copy of a transcription of the report of Resident A and KL submitted this transcription into evidence. Resident A reported they observed DK and another person standing on the stairs going to townhouses on the residential property and observed DK smoking

“something” on the residential property. Resident A reported they have observed DK vape on the property before as well. Resident A reported they could smell something suspicious coming from the rental unit. Resident A reported many tenants in the Premises suspect DK is a drug dealer. Resident A reported they used to see cars coming on the property, DK go down to the car for a second and then come back. Resident A reported DK sleeping in the common area room of the Premises and that DK used the common washroom for 3 or 4 hours. Resident A reported they have also seen the police on the Premises looking for DK. Resident A reported tenants are terrified to go out of their apartments, especially at night. Resident A reported they feel like a prisoner in their rental unit. The dictated report does not state the date and year the report was made by Resident A. Resident A was not called as a witness by the Landlord.

KL submitted an email from the head office of the Landlord which reported that an unidentified tenant of the Premises sent a message on or about June 28, 2016 reporting shouting, screaming and yelling involving DK the early evening of June 24, or 25 which they reported to the police. KL stated onsite staff have received more than four anonymous reports from tenants reporting DK using drugs in the Premises as well as allowing guests into the Premises to drink and sleep in the common areas of the Premises. KL stated these residents are too scared to report incidents and do not want to put anything in writing for fear of reprisals. KL stated onsite staff found burned materials and drug paraphernalia in the storage area and this was reported to head office of the Landlord. KL submitted a copy of emails dated February 14, 2020 through March 17, 2022 between her and other staff members regarding the discovery of burnt materials and drug paraphernalia, doors being left unlocked, evidence of non-residents sleeping in common areas and safety concerns for other tenants of the Premises to corroborate her testimony. KL stated one resident told a staff member that drug dealing has been going on over seven years.

KL submitted a notice dated February 6, 2020 wherein the Landlord advised that, due to suspicious activity on the Premises, the common room lounge and bathroom were being closed on February 11, 2022 until further notice. That notice also advised that the downstairs locker room would now be locked and access to the room would require scheduling with a staff member. KL submitted another notice dated February 10, 2020 regarding security concerns and, as a result, access to the lockers and amenity rooms would be limited.

KL submitted an email dated March 3, 202 from another resident (“Resident B”) who complained the Tenants have been noisy and disruptive at inappropriate times.

Resident B complained about constantly being woken by door slamming, yelling from the balcony, dishes breaking, music and thumping. Resident B also complained about numerous packages going missing and their car being vandalized twice. Resident B also complained of DK often showing “addict behavior” and hopping in and out of different cars exchanging money. Resident B stated they have trouble leaving home out of fear that her unit will be broken into or vandalized. KL submitted an unsigned handwritten note from a tenant, signed with a first name identical to DK, wherein the writer stated they were sorry for any and all noise Resident 2 had to put up with from their roommate. Resident B was not called was a witness by the Landlord.

KL stated that, on December 12, 2021, a driver came to the lobby of the Premises and was intercepted by DK and DK took the Medication from the driver. KL stated JN never received the Medication and, as a result, JN suffered severe discomfort. KL stated the Medication was replaced by the pharmacy that sent it.

KL submitted a statement taken from JN regarding the disappearance of the Medication. In that statement, JN stated she was waiting for the Medications to arrive from the pharmacy but they never arrived. JN stated she phoned the pharmacy the next day and was advised that they would investigate. JN stated that, on the next day after that, she was informed the Medication was intercepted by a man who was later identified as DK. In the statement, JN stated:

Later I was talking to a friend, a dealer I know I told her I was suffering cause I didn't get my pills. She said [first name of DK] from unit [Tenant's unit number] called her trying to sell oxycodone. I asked how many did he have to sell. She said 20. And that was exactly the medication I was waiting for and my prescription is for 20.

In her statement, JN stated she requires the Medication for pain because of cancer and arthritis. JN stated that, as a result of not having the Medication, she had extremely achy bones, was sweating, throwing up profusely, could not sleep and that it greatly affected her mental state. JN stated she saw DK light up a “crack pipe” in the hallway several months prior to the Incident. The Landlord did not call JN to testify at the hearing.

KL submitted an email from a tenant (“Resident C”) who reported that they witnessed a conversation between DK and JN. Resident C reported that DK denied doing anything and that had placed Medication at JN's door. Resident C stated they did not like anyone

taking the prescriptions for any tenants in the building and that the behavior of DK must be addressed seriously. Resident C was not called was a witness by the Landlord.

KL submitted a signed witness statement dated December 16, 2021 from the driver ("DG") who drove the Medication to the Premises. DG stated he rang up to the room for JN but there was no answer. DG provided details of his interaction with DK and stated DK took the Medication on the understanding that it would be delivered to JN. DG stated that it was a lapse in judgment on his part to give the Medication to someone other than the patient, a member of the patient's family or staff at an old age home or care home.

KL submitted an email dated March 25, 2022 from another resident ("Resident D") in which they reported they have had many concerns regarding DK. Resident D reported seeing DK, in the dark, in the community room about 10:00 pm. Resident D stated there have been issues of someone using drugs in the storage room and that many residents have witnessed DK going in and out of the storage room. Resident D reported there was drug paraphernalia in the room and that someone was smoking crack. Resident D stated DK was taking advantage of seniors and borrowing money in the building and that they have witnessed this on several occasions. Resident D reported another resident in the Premises was being manipulated by DK and that the resident was very vulnerable. Resident D stated they do not feel safe to leave their apartment at nighttime and DK shows very dangerous behavior. Resident D was not called was a witness by the Landlord.

DK stated JN did not answer her phone when the DG came to the door of the Premises. DK stated he knew JN and that he has dropped off things to her on previous occasions. DK stated offered to take the Medication from the DG and to deliver them to JN. DK stated he went to JN's door but there was no answer. DK stated DK left the Medication on the wooden railing next to JN's door which was the same location that DK has previously left items for JN. ID stated most of the allegations against DK were anonymized. ID stated that, other than for the Incident, the allegations made against DK were not specific and that it was difficult for the Tenants to respond to them.

Analysis

Rule 6.6 of the RTB Rules states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. *For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*

[emphasis in italics added]

Sections 47(1)(e) and 47(4) of the Act state in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[...]

- (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.

[emphasis in italics added]

KL stated the 1 Month Notice was served on the Tenants by registered mail on January 13, 2022. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received the 1 Month Notice on January 18, 2022. Pursuant to section 47(4) of the Act, I find the Tenants had until January 28, 2022 to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Application was filed by the Tenants on January 24, 2022. As such, I find the Tenants made their application within the 10-day dispute period permitted by section 47(4) of the Act.

The Landlord seeks to end the tenancy for cause on the basis that the Tenants, or a person permitted on the residential property by the tenant, has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Residential Tenancy Policy Guideline 32 ("PG 13") provides guidance on relevant issues such as the meaning of "illegal", which may constitute "illegal activity" and circumstances under which termination of the tenancy may be considered. PG 13 states in part:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. would justify termination of the tenancy.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy. On the other hand, a chemical drug manufacturing operation (e.g methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above the testimony of the other party to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under similar circumstances.

In the present case, the explanation of DK as to the handling of the Medication, namely that he placed it on the railing next to JN's door, is equally as plausible as the Landlord's claim that DK stole the Medication. Other than the version of events set out in JN's statement, KL did not provide any more plausible or credible supportive evidence, such as video surveillance, or the testimony of a single witness, to corroborate her testimony or the statements made in the anonymized emails and other unsigned statements and notes submitted by KL into evidence. An equally plausible explanation for the disappearance of the Medication is the version provided by DK which is that JN's Medication was left on the railing next to JN's door by DK and, after he left, someone else took the Medication. Submitting anonymized emails, transcribed statements and notes from parties who state they have seen a tenant do something suspicious or vaping an unknown substance on the grounds of the residential premises are not the foundation upon which a landlord can establish, on a balance of probabilities, that there has been illegal activity under section 47(1)(e)(ii).

Based on the foregoing I find that the Landlord has not met the burden of proof to demonstrate there is cause for ending the tenancy on the basis that the Tenants, or a person permitted on the residential property by the tenants, have engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful

right or interest of another occupant or the landlord. As such, I find the Landlord has not established cause to end the tenancy pursuant to section 47(1)(e)(ii) of the Act. I allow the Application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

Conclusion

I allow the Application to cancel the 1 Month Notice. The 1 Month Notice is of no force or effect. The tenancy continues until 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: May 12, 2022

Residential Tenancy Branch