



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 28, 2022 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant TH" did not attend this hearing, which lasted approximately 65 minutes. The landlord, landlord AG ("owner"), landlord NG ("landlord's agent"), tenant ZS ("tenant") and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. with me, the tenant, and the tenants' lawyer present. The landlord, the owner, and the landlord's agent called in late at 9:31 a.m. I did not discuss any evidence with the tenant or the tenants' lawyer in the absence of the landlord, the owner, or the landlord's agent. This hearing ended at 10:35 a.m.

The tenants called one witness at this hearing, "witness AM," who was excluded from the outset and returned later to testify. She provided her name and spelling and was affirmed under oath. Both parties were provided with equal opportunities to question the witness, during this hearing.

The landlord confirmed that the owner of the rental unit is her husband, and she acts as a landlord and manages the property with him for this tenancy. She provided the names and spelling for the owner and the landlord's agent. She confirmed the rental unit address. She confirmed that the owner and the landlord's agent, who is her son, had permission to assist her at this hearing.

The tenants' lawyer confirmed her name and spelling. She stated that she had permission to represent both tenants at this hearing. The tenant confirmed that their lawyer had permission to represent them at this hearing.

The landlord's agent and the tenants' lawyer provided their email addresses for me to send this decision to both parties after the hearing.

The tenants' lawyer and the landlord identified themselves as the primary speakers at this hearing. I informed all hearing participants that they could all speak and provide evidence and submissions at this hearing.

At the outset of this hearing, I notified both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. The landlord, the owner, the landlord's agent, the tenant, and the tenants' lawyer all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not advise them on how to present their submissions. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' lawyer confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on January 30, 2022, by way of posting to the tenants' rental unit door. The landlord confirmed that the notice was served to the tenants on January 28, 2022, using the above method. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on January 30, 2022, the actual date the tenant said that they received the notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the landlord's surname. The tenants' lawyer consented to this amendment during this hearing. The landlord provided the correct spelling of her surname and did not object to this amendment. I find no prejudice to either party in making this amendment.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 30, 2018. Monthly rent in the current amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid by the tenants and the landlord continues to retain both deposits. The tenants continue to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice, with an effective move-out date of March 1, 2022, for the following three reasons indicated on page 2 of the notice:

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

Both parties agreed that the landlord indicated the following reasons under the “details of cause” section on page 2 of the 1 Month Notice:

- *“1) continually yelling at other tenants without a valid reason;*
- *2) pushed a lady tenant upon meeting at the door;*
- *3) reason to believe he grows marijuana;*
- **has been disrespectful to landlady.”*

The landlord testified regarding the following facts. Regarding the first reason of yelling, on the details of cause on the 1 Month Notice, the landlord has provided examples from the other tenants at the rental property “RR” and from the landlord. Regarding the second reason of pushing the lady upon meeting her, on the details of cause on the 1 Month Notice, the landlord has provided a letter from the other tenant RR and his wife. The landlord has also provided a police file number for this incident. Regarding the third reason on the details of cause on the 1 Month Notice, for the reason to believe the tenant grows marijuana, the landlord has provided a letter from RR and his wife. The owner believes that the tenant grows marijuana at the rental property. Regarding the fourth reason, where the tenant was disrespectful to the landlord, as per the details of cause on the 1 Month Notice, the landlord asked the tenant to clear the deck in the spring of 2021. The tenant took a long time to clear, and their plants were piled on the deck. The landlord read the tenant’s WhatsApp message aloud during this hearing, where the tenant asked the landlord if they had to ask permission to “go to the bathroom” to “poo” and “pee.” After this message, the landlord blocked the tenant on WhatsApp, and told the tenant to call the landlord’s landline phone, if they needed to discuss anything with the owner.

The landlord's agent stated the following facts. In response to a question from the tenants’ lawyer, the landlord was referencing letters in her evidence from the other tenant RR, dated February 12, 2022, and April 20, 2022. The owner went to the rental unit to complete an inspection in January and gave the tenant 24 hours’ notice. The tenant would not let the owner into the room at the rental unit, so the owner could not check if it was safe. The owner does not feel safe entering the rental unit anymore. The hydro bills have tripled from May 2020 to January 2022, due to the tenants’ usage.

The tenants’ lawyer made the following submissions. The previous decision made under section 56 of the *Act* regarding an early end to tenancy, should be adopted. The previous Arbitrator made findings about the 1 Month Notice and knew about this current hearing. The landlord did not provide proof of the marijuana, the pushing incident or the injuries. It is unfair for the tenants to defend the first application regarding an early end

to tenancy, since the landlord has attempted to bolster their evidence after the previous hearing and have been given a “second kick at the can.” The landlord did not present two witnesses to support their letters from the other two tenants, RR and PT, living at the rental property. The landlord, the owner, and the landlord’s agent were not present during the pushing incident. The only other witnesses are RR, PT, and the tenant. Only the tenant is present at this hearing, to give evidence about what happened during that incident. The landlord has no knowledge of the preparation of the hearsay letters provided as evidence by the other tenants RR and PT. The Arbitrator should not give any weight to the letters from the landlord because the two witnesses RR and PT should be present to support their letters. The other tenant RR provided a hearsay statement, as he was not present during the pushing incident either. The landlord has not provided evidence of the three reasons on the 1 Month Notice.

The tenant testified regarding the following facts. They provided a statement, dated March 7, 2022, and they adopt the information made in that statement. Initially, there was a “neutral” and “amicable” relationship with the other tenant neighbors living downstairs at the rental property, RR and PT. When the covid-19 pandemic happened, around March or April 2020, RR and PT had a “large party,” despite the public health order. The tenant called the landlord for help regarding this party, but the landlord did nothing. RR must have found out about the tenant’s complaint because he became hostile, made complaints about the tenants, turned up his television loudly, slammed doors, and complained about the tenant slamming doors. The tenant does not grow, use, or have marijuana in the rental unit because they know that this is not allowed under the tenancy agreement. The owner came into the rental unit, said the lights were too bright, and there were plants in the hallway. The allegation of pushing a lady at the rental property occurred on a Sunday. Sunday is the only day where the tenant does laundry for two people, they were taking a blanket load down the stairs, they had a large bundle in their arms, and the downstairs tenant PT was coming up the stairs. The tenant stepped aside so that they would not bump into PT. Later, the tenant took out the laundry and was coming up the stairs, when RR cornered the tenant and began yelling at him, saying that they pushed PT. A police constable took a statement from the tenant, told them there was no case against them, and nothing further happened. The tenant took plants off the patio.

The tenant’s witness AM stated the following in response to questions from the tenants’ lawyer. She adopts the statement made in her sworn declaration. She has known the tenant since October 2020. She has been to the rental unit on many occasions, probably about 15 to 20 times. She has not seen any marijuana plants or seen the tenant smoke any marijuana at the rental unit.

The tenant's witness AM stated the following in response to questions from the landlord's agent. She was last at the rental unit yesterday or two days prior to this hearing on May 3, 2022. She cannot recall if she went to the rental unit in December 2021.

The landlord stated the following in response to the tenant's testimony and the tenants' lawyer's submissions. The tenant is unwilling to share or show respect to the other tenants living at the rental property. The tenant is not comfortable communicating with the owner. Since the landlord blocked the tenant on WhatsApp, the tenant is required to communicate with the owner and the communication has been difficult. The owner is afraid of the tenant and cannot perform inspections of the rental unit or care for the building. The other tenant PT left the rental unit out of fear, but she did not press charges against the tenant. PT wanted a police report, but the police told her three days ago, they never provide a report, so she is only required to provide the police file number. The landlord's quality of life has been affected, the tenant's attitude has been negative, and the landlord is trying to prevent a tragedy, so she wants the tenant to be evicted.

The tenant stated the following in response to the landlord's agent's questions. The owner has not been back at the rental unit since the last inspection in January. The hydro bills have increased from May 2020 to January 2022 because the tenant has been home a lot during the COVID-19 pandemic, so he uses more energy at the rental property.

Analysis

Jurisdiction and Previous RTB Decision

Both parties agreed that I had jurisdiction to hear this matter, despite the fact that there was a previous RTB hearing before a different Arbitrator, pursuant to section 56 of the *Act* for an early end to tenancy. The tenants' lawyer stated that the previous Arbitrator made findings about the 1 Month Notice, which should be adopted and referenced at this hearing. The landlord's agent stated that the previous hearing was regarding section 56 of the *Act*, while this current hearing is regarding section 47 of the *Act*, so they are both separate matters.

I informed both parties that I had jurisdiction to deal with this application for the following reasons. This is a new and separate hearing regarding a 1 Month Notice, which was

not decided at the previous hearing. The previous hearing was to determine an early end to tenancy, pursuant to section 56 of the *Act*, while this hearing is to determine an end to tenancy, pursuant to a 1 Month Notice, pursuant to section 47 of the *Act*. The tenant only filed one application to be decided at this hearing, to cancel a 1 Month Notice.

Pursuant to section 64(2) of the *Act*, I am not bound by previous RTB decisions made by different Arbitrators at previous RTB hearings. However, I reviewed the previous RTB decision, dated April 20, 2022, issued by a different Arbitrator. In that decision, the landlord's application for an early end to tenancy was dismissed without leave to reapply and the landlord was not issued an order of possession against the tenant. The landlord, the owner, the landlord's agent, the tenant, and the tenant's witness AM attended those hearings on March 28, 2022 and April 14, 2022. RR attended those hearings as a witness for the landlord, as well as a different lawyer for the tenant. The file number for those hearings appear on the front page of this decision.

Burden of Proof and Legislation

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on January 30, 2022, and filed their application to dispute it on January 31, 2022. Accordingly, I find that the tenants' application was filed within the ten-day time limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. I informed both parties of the above information during this hearing.

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord, the owner, and the landlord's agent did not properly present the landlord's evidence and claims, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord, the owner, and the landlord's agent failed to properly go through the details of the landlord's claims, the 1 Month Notice, and the evidence submitted by the landlord in support of this application.

This hearing lasted 65 minutes, so the landlord, the owner, and the landlord's agent had ample opportunity to present the landlord's application. I provided them with multiple opportunities to present evidence and claims and respond to the tenants' submissions. I repeatedly asked them if they had any other information to present during this hearing.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

I find that the landlord provided insufficient evidence to show that the tenants 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.

I find that the landlord failed to provide sufficient evidence of a pattern of behaviour by the tenants demonstrating *significant* interference, *unreasonable* disturbance, *serious* jeopardy, or *significant* risk, as per the reasons indicated on the 1 Month Notice.

The tenant denied the pushing incident alleged by the landlord and questioned the two witness letters from RR and PT as hearsay evidence, submitted by the landlord. The landlord failed to produce the two witnesses to support the two letters that the landlord relied on at this hearing. The tenants did not have an opportunity to cross-examine or question the landlord's two witnesses, who did not attend this hearing. The landlord produced RR, one of the two witnesses, at the previous RTB hearing, which occurred recently on March 28 and April 14, 2022. However, the landlord failed to produce any witnesses for this current hearing.

The tenant denied growing or using marijuana in the rental unit, as alleged by the landlord. The tenant produced a witness, AM, who testified at this hearing, that she visited the rental unit approximately 15 to 20 times, as recently as one to two days before this hearing, and has not seen the tenant use or grow marijuana there. The landlord's agent testified that the owner was unable to inspect a room at the rental unit in January 2022 and has not attempted to enter the rental unit since then. The landlord testified that she suspects the tenant is growing marijuana at the rental unit. I find that the landlord failed to provide sufficient evidence of same or the effect that it has on the landlord or other occupants, as per the reasons indicated on the 1 Month Notice.

I find that the landlord failed to provide specific details about "continually yelling at other tenants without a valid reason" and any effect on the landlord or other occupants at the rental property. The landlord simply referred to a letter but did not provide any specific details of same, such as the dates of incidents, the people involved in the incidents, the effect on the people involved, or other such information.

I find that the landlord failed to provide sufficient evidence that the tenant "has been disrespectful to landlady." When questioned, the landlord said that she deleted the Whatsapp message that she read aloud during this hearing about whether the tenant needed to ask the landlord to "go to the bathroom" to "poo" and "pee." The landlord said that the tenant was being "difficult" when communicating with the owner and he was afraid to talk to the tenant or inspect the rental unit. The owner did not testify about any of the above events during this hearing, even though he was present.

Accordingly, I grant the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated January 28, 2022, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice is granted. The landlord's 1 Month Notice, dated January 28, 2022, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 on a one-time basis only, from future rent payable to the landlord for this tenancy, in full satisfaction of the monetary award for the filing fee.

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 03, 2022

Residential Tenancy Branch