



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 26, 2022 ("One Month Notice"); for an order directing the landlord to comply with the Act, regulation, or tenancy agreement, and to suspend or restrict the Landlord's right to enter.

The Tenant, his advocate, K.S. ("Advocate"), and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that he was the property manager for the residential property, but that he represented a numbered company that was the owner/Landlord. As such, I amended the respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on his Application, the most urgent of which is the claim to set aside a One Month Notice. I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I advised the Parties that I would, therefore, only consider the Tenant's request to set aside the One Month Notice at this proceeding. As such, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 23, 2022, with a monthly rent of \$600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

The Parties both submitted a copy of the One Month Notice, which was signed and dated February 26, 2022, and which has the rental unit address. It was served by taping a copy to the door of the rental unit February 26, 2022, with an effective vacancy date of March 31, 2022; however, the vacancy date is automatically corrected by the

Act to April 30, 2022. The One Month Notice was served on the grounds that the 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; 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.

In the hearing, the Agent said that he served the Tenant with the One Month Notice for the following reasons:

Basically, the reason why I evicted him was due to the fact that he didn't correct quiet enjoyment issues. I gave him several verbal warnings and he showed up to my door very late at night declaring I was hiding his girlfriend in my apartment, and letting random individuals into his apartment to steal from him. He was under the influence. He did this to other apartments, too, saying they are hiding his girlfriend. He disregarded my warnings and continued this behaviour.

The Agent said this happened: "...late at night/early in the morning – 12 or 1 a.m. I was asleep at the time; this was before the eviction notice in February." The Agent said he gave the Tenant a verbal warning to not do that anymore, but he went on knocking on other tenants' doors, looking for his girlfriend.

The Advocate said: "I wasn't present, and he doesn't have a girlfriend. He's a single man."

The Agent described another incident that occurred prior to the eviction notice. He said:

[The Tenant] flooded the apartment underneath his. Other tenants woke me up early to investigate. It came from [the Tenant's] apartment. He had fruits and veggies covering the drain with the shower on. I removed the debris. The apartment comes with a sink. It happened twice.

I asked the Agent when the flooding incident occurred, and he said that it was at 2 to 3 o'clock in the morning on February 23, 2022. The Agent continued:

Another time, I had a plumber come in to replace a radiator – I ordered a new one. I gave him notice well in advance about the plumber's appointment. On the day of the maintenance, he didn't answer the door after we were knocking for several minutes.

I opened door and found him sleeping. [The Tenant] and a friend were staying there. He refused to let me or the plumber into the apartment, and he called me a lot of words. I advised the [social worker] team that deals with [the Tenant] to come and make sure he wasn't home for the rescheduled appointment, or make sure there's not a problem.

Basically, I call them when I have any problems. Normally, they correct it. But in this case with [the Tenant], he ignored my warnings, he has a poor attitude toward me and other tenants. It's unfair to them and me.

The Agent said that the incident with the plumber happened on March 4, 2022, at around 8 or 9:30 a.m. He also confirmed that he had given the Tenant 24 hours written notice of this appointment, which he said he had done on March 1, 2022.

The Advocate said: "I didn't see [the 24 hour notice]. We support both Parties so they are both happy." The Tenant denies having seen the 24 hour notice for the plumber.

The Advocate continued:

My argument is that he had used the shower, and this is an older building. If it flooded in that fashion, there must have been, you must have had to do some gutting. How can a big flood happen? There's no evidence of that really. How much water? He was taking the shower, a little bit of water.

How big of a flood? And how much water had gone through the ceiling? Did they have any repairs done? You have to gut the floors and insulation You can't tell me there was this big of a flooding and there were no repairs after that. If it's an old building and the drain is getting covered. He never checked the plumbing with every person. It's an old building, not a castle. You can't blame us on your building's condition

I asked the Agent if they had done any repairs after this incident, and he said:

Nothing. The [lower] tenant had to shove one of his sheets into the ceiling – there is five feet of attic between the units. Yes, the building is over 100 years old, but usually when giving these units – they are renovated first. That unit was vacant about a year before [the Tenant] was admitted.

As for the drain, he had a bunch of fruits and vegetables in there. It's only a stand

up shower - everything ran off into the low point in the building. There was no damage other than a soaked ceiling.

The Advocate said:

This is an old building we're talking about; I could not see that all these problems are happening because the client had a shower, he came out of the shower, he towelled off, maybe dripped some water on the floor.

I asked the Agent how much produce was in the shower when the Agent was alerted about water seepage from the tenant below. The Agent said: "The entire bottom of the stand up shower was covered in produce. And that was covering the drain."

The Tenant addressed this matter, as follows:

I can recall that the reason was I came home from the food bank. The was ranch dressing all over 15 potatoes. I just put the sweet potatoes in there and was washing off the ranch. He barges in to my suite and he just opens my door with no notice. I have 15 potatoes on the floor. He's lying. There were only 15 potatoes. The shower has a five-inch lip, so 15 potatoes wouldn't flood anything. The shower curtain was not fully in ... It was not a litre of water on the floor here.

The Advocate focused his comments on the repairs that were or were not completed following this incident. I asked the Agent about the repairs, and he said:

The ceiling that was wet; I've had damages to my suite, and mine hasn't been repaired. This was before I took over as property manager. The building's over 100 years old. Normally when people move out, we do the repairs then. As for [the Tenant's] apartment. the owner hired cleaners to clean the entire suite.

It is the picture of the [bed] sheet in the roof where all the water pooled and came down. I've had plumbers to see other issues, and they told me there was no issue. It came down to him flooding the apartment. This is [the lower tenant's] bedroom. It would have been more significant damage if there were in living room – no TVs - only his bed got wet, and the sheet and water on the floor and that was pretty much it.

The Advocate said:

A plumber arrives, sees a pool of water from the ceiling and says there nothing

wrong with that. It's mind blowing to me.

There's no report given to the owner saying you don't want to fix it. This building – let it just fall down and collapse. I just don't understand. If there was a little bit of water and nobody cares about any repairs and the safety of the whole place.

It's relevant because the amount of water we're talking about. There should have been some repair work done. They are jeopardizing the Tenant falling through the ceiling.

I offered the Parties the opportunity to make any last statements before I ended the hearing. The Agent said:

Basically, all the behaviour and the warnings, and it was kind of an escalation that I gave him an eviction notice. There were multiple things at the time. Ultimately, I don't abide by disturbing me or other tenants – that's where I draw the line. I have an 81-year-old lady living in this building as well.

The Tenant made the following last statements in the hearing:

I believe that I have rented in the past for years, and I've never had a problem. And many ex landlords that can also say that I have never had a problem - I can give phone numbers. I cannot – there was no 24-notice – that's not with the code. After he barged in, I was in my room washing the ranch off, but no notice was given. No warnings. No to what he's saying, as well. He's painting a picture. No warnings, I didn't try to barge into his suite. I told him about another person fighting, and the . . . the cops were there for two other guys. There were so many things going on that were way worse. I was just washing off some ranch from potatoes - the first day I was in there. It's not right. I feel unsafe in my apartment.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for 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

(iii) put the landlord's property at significant risk;

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

In this case, the Agent alleged that the Tenant's behaviour led to him being served with an eviction notice. The Agent noted that the flooding incident occurred on February 23, 2022. He said the incident wherein the Tenant knocked on the Agent's door in the middle of the night occurred in February 2022, but he could not remember the particular date. These were the incidents that contributed to the eviction notice. The incident when the Tenant refused the Agent and the plumber entry to replace the radiator occurred on March 4, 2022, after the One Month Notice had been served. As such, I do not consider that part of the grounds for the eviction notice.

The Tenant did not deny that these incidents occurred, nor did he offer any explanation or regret for his behaviour in this regard. His Advocate focused on the age of the residential property, but he did not explain what this had to do with the Tenant's actions that led to the eviction notice. I find that his knocking on the Agent's and other tenants' doors in the middle of the night clearly qualifies as significantly interfering with and unreasonably disturbing other occupants of the residential property. Causing water to

flow from the Tenant's unit to the unit below also fits within this description of action, as well as having caused damage to the Landlord's property.

The failure of the Landlord to do any repairs to the ceiling of the apartment below the Tenant's raises questions in my mind about the Landlord fulfilling their obligations to maintain the residential property pursuant to section 32 of the Act. The Agent submitted a photograph of a folded up sheet sticking into a hole in the ceiling of the unit below. I find that it would be reasonable for the Landlord to have repaired this hole; however, that is not the issue before me. Still, **I caution the Landlord** that **they are required to maintain a building while it is occupied by tenants**, and not only when the tenants have vacated the respective units. Again, this is not relevant to the issue before me. When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

I, therefore, dismiss the Tenant's Application wholly, as I find that the Landlord met their burden of proof in this matter. Accordingly, and pursuant to section 55 of the Act, I **grant the Landlord an Order of Possession** for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives this Order.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities. Accordingly, I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of April 30, 2022.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 17, 2022

Residential Tenancy Branch