



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P255 ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC OLC**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing. The corporate landlord was represented by an agent. The tenant was assisted by a family member and primarily represented by an agent. The parties were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Landlord's Evidence

At the outset of the hearing the tenant requested that some of the audio recording evidence submitted by the landlord be excluded. The tenant submits that the recordings were taken unlawfully without their knowledge and consent outside of the tenant's rental unit.

Section 75 of the Act provides that:

The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a) necessary and appropriate, and

(b) relevant to the dispute resolution proceeding.

I find that recordings showing the volume and conduct of the tenant audible from outside of their rental unit is necessary and appropriate in a dispute resolution proceeding where the landlord has issued a notice to end tenancy for significant interference and unreasonable disturbance of other occupants. I find the materials submitted by the landlord to be relevant to the issues in dispute and necessary and appropriate. Accordingly, pursuant to my authority under section 75 of the Act I allow the inclusion of the landlord's materials.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy originally began on April 1, 2021 for a fixed-term of 5 months. The tenancy was renewed for another fixed-term from August 16, 2021 to April 30, 2022. The tenancy is currently continuing on a month-to-

month basis. The monthly rent is \$1,150.00 payable on the first of each month. The rental unit is a suite in a multi-unit building of 11 units.

The landlord issued a 1 Month Notice dated March 2022 which the tenant confirms was served on them on March 18, 2022. The tenant filed their present application on March 24, 2022. The 1 Month Notice provides the following reasons for ending the tenancy:

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.

Tenant has not done required repairs of damage to the unit.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord gave testimony about the tenant's behaviour including their failure to abide by public health orders and quarantine themselves when they were symptomatic with the Covid19 virus, allowing a large number of guests into their suite, excessive noise that is audible outside of the suite, unauthorized tampering with electrical systems, leaving the patio door unlocked or ajar and interactions with other occupants or the landlord's agents.

The parties gave lengthy testimony of an incident on December 15, 2021 where there was flooding originating in the rental unit. The landlord attributes the flooding and damage to the property to the negligence of the tenant in leaving the tap running and plugging up the drain with foodstuffs.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for any of the reasons identified in the 1 Month Notice.

Based on the totality of the evidence including the testimonies of the parties and their witnesses, the documentary submission and audio recordings I am unable to find that the landlord has established cause for this tenancy to end. While it is clear from the evidence and demeanor of the parties at the hearing that their relationship is strained, I do not find sufficient evidence to conclude that the conduct of the tenant is so unreasonable or significant such that it forms a basis for the tenancy to end.

I find the audio recordings of the tenant submitted by the landlord to demonstrate that some sounds are audible outside of the rental unit. I find that the volume and content of the audio recording to not be sufficient to be accurately described as an unreasonable disturbance. I find that some sounds being audible through walls and doors to simply be a characteristic of a rental property of this age and construction. While the tenant uses some profanity in their audio recording I find this to be more in the nature of frustrated expletives rather than threatening or hostile comments directed at specific parties.

I find the conduct of the tenant's family member at the hearing to be far more disruptive with multiple interruptions during the hearing, unsolicited comments and rude behaviour. However, the conduct of the tenant's family at the dispute resolution hearing is not evidence that there is a basis for the 1 Month Notice.

Similarly, while I find the evidence of the tenant's conduct during an ongoing pandemic to be foolhardy I find there is insufficient evidence on the part of the landlord to demonstrate that there is a serious jeopardy to the health or safety caused by the tenant. I find the testimony of the landlord to be insufficient to meet their evidentiary burden.

While the parties agree that there was an incident in December 2021 where flooding occurred and there was considerable damage to the rental suite I am unable to find that this was not an isolated incident with little risk of recurrence. I find little evidence that the property is put at significant risk by the tenant. Similarly, I find the tenant's failure to lock or close their patio door may be considered unwise but I find it is not a significant risk to the property.

I find little evidence in support of the other reasons indicated on the landlord's 1 Month Notice. While the parties made some brief submissions regarding the presence of a service animal and whether that was a breach of a material term, neither party gave much evidence on this point. I find little evidence that the tenant is or has knowingly given false information to prospective tenants or purchasers.

Taken in its entirety I find the landlord has not met their evidentiary burden on a balance of probabilities. Consequently, I allow the tenant's application and cancel the 1 Month Notice of March 2022.

I find no basis for the portion of the application seeking an order of compliance. The undisputed evidence is that the parties entered an initial fixed-term tenancy, a second fixed-term tenancy was signed by the parties and the tenancy is now continuing on a month-to-month basis in accordance with the *Act*. I find no breach that requires a corrective order.

Conclusion

The tenant's application is successful. This 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: July 12, 2022

Residential Tenancy Branch