



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION & ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, RR, PSF, LRE, OLC, FF

Introduction

This original hearing convened on July 14, 2022, by teleconference to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- a reduction in monthly rent;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- recovery of the cost of the filing fee.

At the original hearing, the landlord's two agents attended and the tenant did not. Another arbitrator conducted a full hearing and heard the merits of the landlord's Notice. The original arbitrator found that the landlords proved the issues on the Notice and granted the landlord an order of possession of the rental unit, effective two days after service on the tenant.

The tenant filed an application for review consideration and another arbitrator granted the tenant a new hearing.

The tenant and landlord's agents (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the hearing, the tenant confirmed he received the landlord's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the tenant listed multiple claims. I find the most urgent matter to consider is the tenant's request for cancellation of the Notice and further find that not all the additional claims on the application are sufficiently related to the primary issue. I will, therefore, only consider the tenant's request to cancel the Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply, unless I confirm the original Decision, which dismissed the remaining claims, without leave to reapply.

Additionally, the landlord submitted that when he talked to staff at the RTB, he was informed that this hearing was not for the purpose of a "do-over", and that the first hearing and testimony would be taken into consideration.

The parties were informed that when another arbitrator granted a new hearing, what that meant would be the hearing would be conducted anew and the original Decision would not be taken into consideration. The landlord was informed that I could not change the other arbitrator's Decision that granted a new hearing.

Following this review, I may confirm, vary, or set aside the original Decision or order.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove the causes listed on the Notice and is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The evidence at the hearing showed this tenancy began on April 1, 2021 and monthly rent is \$1,975.

The subject of this dispute is the Notice issued by the landlord to the tenant. The Notice was dated March 17, 2021, and listed an effective move-out date of April 30, 2022. On their application, the tenant confirmed receiving the Notice on March 17, 2022. Filed in evidence by the tenant was a copy of the Notice. The landlord confirmed that the Notice date was a clerical error, as it should have shown a date of March 17, 2022.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant or a person permitted on the property 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.

In the details of causes section on the 1 Month Notice, the landlord wrote information on 5 points.

1. April 2021-present trafficking drugs in and around (**residential property street address**)-video provided
2. Making lewd, sexual gesture in video directed to female manager.
3. Swearing and being abusive to female manager when asked about spilling coffee in elevator on January 20, 2022.
4. Nov 16, 2021 – 2 incidents of mail being destroyed by tenant (**tenant surname**) that was not his mail. Video evidence. This is currently being investigated by Canada Post.
5. Nov 16, 2021 provide entry to burglar who assaulted manager.

[Reproduced as written except for anonymizing personal information to protect privacy]

In support of their application, the landlord provided a substantial amount of evidence, which included written statements and black and white screen shots from the landlord's video surveillance cameras in the residential property. The landlord explained that the building is monitored off-site using the security cameras and any issues are reported to the on-site building managers.

The landlord also provided communication between the police department and the landlord, incident reports, and text messages from another tenant in the building, who lives close to the tenant and who knows the tenant.

When the landlord began presenting their evidence, it appeared the landlord read from their written statement. I asked the landlord to affirm that their testimony would reflect their written statement, and they said it would.

The landlord then provided a summary of their written statement and referred to photographic evidence.

In summary, the landlord testified that the surveillance cameras have picked up suspected drug dealing by the tenant and that the tenant is known as a drug dealer by other tenants. The landlord submitted still shots of suspected drug dealing activity, explaining that it was not possible to upload full videos. In particular, the landlord said that the tenant appeared to touch hands with other persons, indicating a drug swap. The photo was dated April 20, 2021. The landlord submitted that he is a former police officer and is familiar with what a drug deal looks like. The landlord submitted that they were in contact with a local constable with the police department who conducted an investigation.

The landlord submitted that he was alerted by the video security team of incidents surrounding the tenant on April 20, 2021 that the tenant allowed a street person into the building via the lobby and were both seen entering the elevator. The street person was later seen entering the lobby from stair one and seen exiting through the front door.

The landlord submitted photos indicating that the tenant was accompanied by 2 males as a food delivery driver went to the intercom outside the courtyard front entrance gate. The tenant then used his fob to open the gate, allowing one of the males to enter the courtyard. Right after, the tenant fobs the front door to the lobby, leaving the male in the courtyard. The security company alerted the landlord that the male parties were

being aggressive to the food delivery driver, which prompted the landlord to get out of bed to investigate.

On November 16, 2021, the landlord submitted that the tenant exited the front door, allowing a male and female to pass through to the lobby, and that both individuals were there to commit crimes, with the female attempting to gain entry to the parcel lockers and the male attempting to break into the office. The female carried a 12" vice grip, which was later used to assault the manager/landlord. The manager confronted the persons breaking in and was assaulted. The landlord called the police and reported the assault. The landlord was informed that the police recognized the individuals as part of a local breaking and entering crew.

The landlord submitted that on November 16, 2021, the tenant was seen to enter the front door and grabbed his crotch. This video was seen by female staff, which they found to be disturbing and offensive.

On June 12, 2022, a suspicious male walked under the open parkade gate and down the ramp, entering the elevator landing and disappeared into the stairwell. The gate was disabled at that time due to mechanical issues and was guarded by a temporary guard. Later in the hearing, the landlord confirmed that the guard had been away from their position at that time on a bathroom break. The suspect was thought to have stolen two sets of golf clubs belonging to other tenants. Later on, one of the tenants whose clubs were stolen canvassed the drug addicts and street people, including those at the safe injection site near the residential property and they indicated the tenant was the one who stole the clubs.

The landlord submitted that the tenant has been seen examining his mail and ripping up envelopes, putting them in the trash. The other manager saw the video and retrieved the torn envelopes, which showed they were addressed to other people. The landlord stated these incidents were reported to Canada Post and are being investigated.

Tenant's response –

In his application, the tenant wrote the following:

They tried giving me a 30 day notice months ago for "suspected drug dealing" which I disputed and won. Since then they have been spiteful, unprofessional and seeking to save face in the company they work for. In addition, they

falsified/embellished 4 more incidents: Making lewd sexual gestures Being abusive to his wife Destroying misdelivered mail Providing entry to burglar

[Reproduced as written]

The tenant asserted the still photos do not prove that his hand came in contact with other people and the picture seemed more of a greeting gesture. The tenant submitted that none of the other pictures show him in the same frame as the persons in question and they do not show him letting anyone in.

The tenant submitted that the building is not safe as it is next to a drug site and questioned why he would let anyone into a building where he lives. The tenant asserted the landlord's evidence is only speculation.

The tenant submitted that the two people harassing the food delivery driver were from the club across the street.

The tenant confirmed that he did grab his crotch, as he was having a bad day as the landlord called the police on him.

The tenant denied stealing the golf clubs and that he went next door to the drug site in an attempt to buy the clubs from whoever stole them. The tenant explained that he did this as the other tenant was being cold towards him, and he wanted to do that for them.

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. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

While the landlord has the burden of proof, I have reviewed and considered the oral, documentary, and photographic evidence of both parties.

The Notice in this dispute was issued under section 47(1)(d)(i) of the Act, which permits a landlord to end a tenancy if,

(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,

and under section 47(1)(e)(ii) of the Act, which permits a landlord to end a tenancy if,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that [. . .] (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 [. . .]

The tenant stated in his application that these matters on the Notice had been heard and considered in a previous dispute resolution hearing. However, neither the tenant nor landlord provided a copy of the previous 1 Month Notice or the decision related to it. I therefore could not consider if these matters had been already decided.

In the matters before me, I take into consideration the landlord's 5 points on their details of causes listed on the Notice and their corresponding evidence.

As to point 1 on drug trafficking in and around the residential property. I find the landlord submitted insufficient evidence to support this reason. In reaching this conclusion, I find it unreasonable to wait nearly a year, from April 2021 until March 17, 2022, to issue the Notice. Apart from that, I was unable to sufficiently determine that the photos showed that the tenant was dealing drugs. The printed, black and white photos were not clear and were at times grainy. I would expect the landlord to submit current evidence around their allegation of drug dealing, not stale evidence. The landlord submitted they started an investigation with the local police department in April 2021, but there was no evidence of the report or conclusion. Additionally, there was no proof filed that the tenant had been arrested and charged with drug dealing. The landlord did not provide direct evidence from other tenants showing they saw the tenant dealing drugs.

For these reasons, I find the landlord submitted insufficient evidence of this part of their Notice.

Points 2 and 3, making a lewd, sexual gesture in video directed to female manager and swearing and being abusive to female manager when asked about spilling coffee in elevator on January 20, 2022.

The tenant agreed that he did make this rude gesture towards the camera on the day in question. I cannot find that the gesture lead to the tenant being issued a Notice, as this event occurred on November 16, 2021, according to the landlord. I find it unreasonable to delay until March 17, 2022, to issue the Notice. While I do find this gesture was rude and offensive, I do not find sufficient evidence that it significantly interfered with or unreasonably disturbed the landlord. Likewise, I find the behaviour towards the landlord when asking about a coffee spill in the elevator to be troubling, but I find it does not rise to the level of significant interference or unreasonable disturbance, at this time. I will address cautions to the tenant within this Decision.

As to point 4, 2 incidents on November 16, 2021 regarding the destruction of other people's mail, while this may very well be in violation of federal law, I do not find that ripping up other's mail adversely affected the quiet enjoyment of another occupant of the landlord.

As to point 5, providing entry on November 16, 2021, to a burglar who assaulted the manager, I find the grainy or fuzzy photographs are insufficient to establish that the tenant allowed these individuals into the building. Additionally, I do not find it reasonable to wait from November 16, 2021 until March 17, 2022, to issue a Notice on this basis. While the landlord did not list this reason on the Notice, the landlord testified about theft of golf clubs and the possibility of the tenant allowing an unknown male to enter the premises. As the landlord confirmed that the unknown male entered the open gate when the security guard left temporarily, I find insufficient evidence that the tenant allowed this male to enter the property. I also find the landlord submitted insufficient evidence that the tenant stole or had stolen the golf clubs, as the evidence on this point was hearsay and not substantiated by direct evidence.

Overall, when reviewing the landlord's evidence, I find insufficient evidence to show that on the day the Notice was issued, the landlord had cause to end this tenancy.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued on March 17, 2022, for an effective move out date of April 30, 2022, is not supported by the evidence, and therefore has no force and effect. I **order** that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

As the tenant was successful with his application, I grant the tenant recovery of his filing fee of \$100. I direct the tenant to deduct \$100 from a future month's rent payment to satisfy this monetary award.

Cautions to the tenant –

Although I have cancelled the Notice in this case, due to my findings herein, I find the evidence shows, and the tenant confirmed, that the tenant has made a rude and offensive gesture towards the surveillance camera, which would be considered vulgar by many in society. I also cannot condone the behaviour of the tenant in yelling and swearing at the resident manager and I find it troubling, if true.

A landlord is entitled to and in fact, obligated, to conduct the business of being a landlord in running a safe residential property for the benefit of all tenants, free from interference from the tenant. Had the landlord provided clearer evidence of drug dealing on the premises or allowing persons who should not be on the residential property entry, the Notice likely would have been upheld.

The tenant is now informed that should he continue to use rude and offensive gestures to the landlord or to yell at the landlord, this may be considered repeated behaviour which could lead the landlord to issue the tenant another 1 Month Notice, and if they choose, the landlord may use this Decision as support for their Notice.

As I have granted the tenant's application at this review hearing, pursuant to section 82(3) of the Act, **I set aside** the Decision and order of possession (Order) issued on July 15, 2022 dismissing the tenant's application. The Decision and Order of July 15, 2022, are of no force or effect.

Conclusion

The Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant is authorized to deduct \$100 from a future month's rent payment in satisfaction of recovery of his filing fee.

The tenant has been issued cautions.

The portion of the tenant's application not dealing with his request seeking cancellation of the Notice is dismissed, with leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 15, 2022

Residential Tenancy Branch