



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47 of the *Act*.

The landlord's property manager (the "landlord"), the landlord's caretaker (the "caretaker"), tenant M.C. and the tenant M.C.'s advocate (the "advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

I note that section 55(1) of the *Act* states that if the landlord's Notice complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the Notice, the director must grant the landlord an order of possession.

Preliminary Issue- Service

The advocate submitted that the landlord was served with the tenants' application for dispute resolution and evidence via registered mail on July 14, 2022. The landlord testified that the above package was received on July 18, 2022. I find that the above documents were served on the landlord in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the landlord's evidence was served on the tenants in person on November 1, 2022. The tenant agreed with the above testimony. I find that the tenants were served with the landlord's evidence in accordance with section 88 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Notice, pursuant to section 47 of the *Act*?
2. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on March 1, 2015 and is currently ongoing. Monthly rent in the amount of \$1,346.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the Notice was personally served on the tenants on June 21, 2022. Tenant M.C. testified that he was personally served with the Notice but did not recall on what date.

The Notice was entered into evidence, is signed by the landlord, is dated June 21, 2022, gives the address of the rental unit, states that the effective date of the notice is July 31, 2022, is in the approved form, #RTB-33, and states the following grounds 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 or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The Details of Cause section of the Notice states:

- On May 15, 2022 the resident and their guest had the building on lock down due to a potential drug deal and gun incident by [subject rental city] police].
- Residents of the building fear for their lives (adults, children, seniors).

The landlord testified that on May 15, 2022 the entire rental building was put on lockdown after a gun altercation involving the tenants' son, who does not reside in the subject rental property, and another person, in the parking lot of the subject rental building. The landlord testified that the IHIT police team attended and arrested the tenants' son.

The landlord entered into evidence a video of the tenants' son taken outside the elevators in the subject rental property shortly after the May 15, 2022 incident. The following is a transcript of the audio in the video:

- Tenants' son: [inaudible]...well fucking find him, why are you putting me in fucking cuffs, throwing me on the ground and shit. Bullshit! That guy shoots a gun right in my fucking face [inaudible]...fucking losers man. I defend myself and this is what happens. Fucking bullshit. And then the guy gets away. And then the guy who fucking does this gets away.
- Videographer: Who?

- Tenants' son: The guy that fucking tried to shoot me. Tried to fucking shoot me in the parking lot right here.
- Videographer: I don't know I just came. I don't know.
- Tenants' son: The guy just tried to shoot me.
- Unknown speaker: Who?
- Tenants' son: I don't know, some guy, the fucking, this guy I fucking knew that I've been talking to the last week, he was supposed to be my friend. He fucking fires, he pulls out a gun, he starts fucking "give me my money, give me my money". I said, "I already gave you your fucking money, fuck off." And then he fucking fired a shot at me so I fucking ducked it, started fighting him and the cops came and made a big fucking ordeal on it.

The landlord entered into evidence photographs and videos of the police attending the subject rental building following the May 15, 2022 incident.

The landlord testified that other tenants in the building are scared of the tenants' son. The landlord entered into evidence 10 letters and emails from tenants in the subject rental building expressing their distress at the May 15, 2022 altercation. The landlord testified that prior to the May 15, 2022 incident, the landlord has had other problems with the tenants' son at the subject rental property. Additional letters of complaint against the tenants' son were also entered into evidence pertaining to issues not listed in the details of cause section of the Notice.

The landlord testified that tenant M.C. is a nice gentleman but he cannot control his son who is scaring the residents of the building. The landlord testified that he believes the May 15, 2022 incident was a drug deal gone bad.

Tenant M.C. testified that his son was attacked in the parking lot and that his son acted in self defence. Tenant M.C. testified that the police attended and that this was terrifying. Tenant M.C. testified that he came down and that while the police originally arrested his son, after learning that he was the one who was attacked, they released him without laying charges, and apologized to his son.

Tenant M.C. testified that his son didn't do anything wrong, his son was attacked. Tenant M.C. testified that he shouldn't get evicted because his son was attacked.

The advocate submitted that that the tenants' son is not involved with drugs and no charges were laid against the tenants' son. The advocate submitted that this was a

random attack against the tenants' son. The advocate submitted that if the landlord is concerned about the tenants' son's attendance at the subject rental property, the landlord is free to apply for a no contact order but is not permitted to evict the tenants because the tenants' son was attacked in the parking lot of the subject rental building.

Analysis

I accept the landlord's testimony that the Notice was personally served on the tenants on June 21, 2022. I find that the above service was completed in accordance with section 88 of the *Act*.

Section 47(1)(d) and section 47(1)(e) of the *Act* state:

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;

(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;

Based on the testimony of tenant M.C. and the video of the tenants' son taken shortly after the May 15, 2022 incident, I find that an associate of the tenants' son (the "assailant") pulled a gun on the tenants' son in the parking lot of the subject rental building. I find that the tenants' son, is a person permitted on the property by the tenants. However, I am not able to find that the assailant was permitted on the property by the tenants. I find that the connection between the assailant and the tenants is too far removed to enact section 47 of the *Act*.

I find that the illegal activity complained of in the Notice and the disturbance caused by the illegal activity was caused by the assailant to who pulled a gun on the tenants' son. I find that as the assailant was not a person permitted on the property by the tenants, and that the tenants therefore cannot be evicted for the May 15, 2022 disturbance under section 47(1)(d) or section 47(1)(e) of the *Act*.

I note that while the landlord complained of other issues with the tenants' son in the hearing, the other issues were not the basis of the Notice and so cannot be considered in the determination of the Notice's validity.

Pursuant to my above findings, I cancel the Notice and find that it is of no force or effect. This tenancy will continue in accordance with the *Act*.

Conclusion

The Notice is cancelled and of no force or effect.

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: November 16, 2022

Residential Tenancy Branch