



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 a tenant's application to cancel a *One Month Notice to End Tenancy for Cause* ("1 Month Notice").

Both parties appeared for the hearing and were affirmed. The tenant was also assisted by an Advocate.

The hearing was held over two dates and an Interim Decision was issued on October 5, 2022. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had authorized and ordered the parties to provide additional evidence during the period of adjournment. At the start of the reconvened hearing, I explored service of the additional materials.

The tenant had provided her additional materials to me and her Advocate; however, she had not provided it to the landlords as I had ordered her to do. The tenant stated she did not understand she had to serve it to the landlords.

As for the landlord's additional materials, the landlord testified that it was sent to the tenant in two ways: by email on October 25, 2022 and by registered mail sent on October 26, 2022. The registered mail was still waiting to be picked up as of the date of the reconvened hearing. The tenant denied receiving a registered mail notice card. The tenant acknowledged the landlord's evidence came to her via email but she did not see it until recently because it went to her "junk" folder in her email.

I discussed with the parties the best way to proceed, fairly, given the tenant's failure to comply with my order to serve the landlords with her additional materials and the

tenant's claim she had not received a registered mail card and only recently saw the landlord's email. The parties were willing to proceed with a focus on oral evidence.

I instructed the tenant's Advocate to read into evidence the information concerning the court proceeding and peace bond in place against the tenant's ex-boyfriend, which he did. I instructed the landlords to provide oral testimony concerning their reasons and evidence for seeking to end the tenancy so that the tenant may hear the allegations against her and respond accordingly.

I have considered all relevant evidence carefully in reaching this decision. However, only the most relevant evidence needed to resolve the issue(s) of this dispute, and to explain the decision, is referenced in this decision.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. If the 1 Month Notice is upheld, when should the Order of Possession take effect?
3. If the 1 Month notice is cancelled, is it appropriate to issue orders to the tenant?

Background and Evidence

The month to month tenancy started on January 1, 2020. The tenant is currently required to pay rent of \$964.25 on the first day of every month.

The rental unit is located in a four plex. The other three units are also tenanted.

On May 18, 2022 the landlord posted the 1 Month Notice, with an effective date of June 30, 2022, on the door of the rental unit. The tenant filed to dispute the 1 Month notice within the time limit for doing so.

The reasons for ending the tenancy, as indicated on the 1 Month Notice are:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ 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

In the Details of Cause, the landlord wrote [tenant's name omitted by me]:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

and her guests continue to cause disturbances which significantly interferes with other tenants rights to quiet enjoyment of the property.

Notice of warning served:

march 3/2020	Nov 24/2021
Aug 8/2020	May 16/2022.
Aug 14/2020	

The landlord testified that the other tenants complained of loud noise consistent with substance use, partying and fighting late at night and in the early morning hours.

Upon review of the warning letters, in summary, the warning letters pertained to the following:

- May 3, 2020 – Tenant and guest fighting
- August 8, 2020 – Tenant yelling at another tenant and throwing rocks at window
- August 14, 2020 – Tenant keeping unauthorized dog
- November 24, 2021 – Unreasonable noise
- May 16, 2022 -- Tenant and guest fighting

The landlord acknowledged that the tenant resolved the issue concerning the dog. The tenant who complained in August 2020 that tenant was yelling at her subsequently moved from the property. The other two complainants continue to reside at the property and issued letters in support of reasons for evicting the tenant.

The landlord acknowledged that since the eviction notice was issued on May 18, 2022 the tenant has been quiet. The landlord attributed the improvement to the fact the tenant is facing this eviction proceeding.

The tenant acknowledged that up to May 2022 she was in a toxic relationship with her then boyfriend (now referred to as ex-boyfriend) and there was drinking, partying and fighting taking place that affected other tenants on the property. The last disturbance was on May 14, 2022 and on that day her ex-boyfriend assaulted her. The tenant's ex-boyfriend was arrested, released with several conditions and has been criminally charged with the crime. The tenant has been receiving updates through Victim's Services. The tenant and her Advocate submitted that the tenant's ex-boyfriend is prohibited from being near the tenant, including the rental unit. Since the ex-boyfriend was arrested he has not been back to the property.

The ex-boyfriend's criminal case was originally scheduled for October 5, 2022 but was delayed to November 16, 2022 according to what Victim's Services reported to the tenant.

The tenant was of the position that she has been a lot quieter and much less noise is coming from her unit since May 2022, not because she received an eviction notice, but because the toxic relationship she was in with her ex-boyfriend is over and because the tenant has been working to improve herself, including counselling and treatment for substance use.

As for the tenant who complained the tenant throw rocks and yelled at her in August 2020, the tenant explained she threw some small pebbles at the window as she was trying to get that tenant's attention since the tenant and her daughter could hear that other tenant having loud sex. The tenant pointed out that sounds from other units are rather easy to hear in the building.

The tenant seeks to continue the tenancy and agrees to abide by noise by-laws and quiet hours; and, to ensure the peace bond is enforced if her ex-boyfriend attempts to come to the property. The tenant assured me that the relationship with her ex-boyfriend is over.

The tenant's advocate argued the tenant is a victim of domestic violence and should not lose her home because of that, especially since the abuser is no longer permitted on the property.

The landlord argued that a peace bond is only as good as the parties involved. The victim has to report and seek police assistance if the offender breaches the peace bond and a determined offender will not be deterred by a peace bond. The landlord submitted that the tenant has been aggressor toward other tenants and not all of the complaints can be attributed to the tenant's ex-boyfriend. Further, the tenant has made promises to the landlord before, yet the offending conduct repeated.

Finally, the landlord stated the tenant has been less than co-operative in responding to the landlord's communications and referred to the landlords by their skin colour.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The 1 Month Notice before me is in the approved form and is duly completed. At issue is whether the tenancy should end for the reason(s) indicated on the notice and I provide my findings and reasons below.

Every tenant is entitled to quiet enjoyment of their rental unit and freedom from significant interference to use common areas of the property. Where a tenant is suffering from loss of quiet enjoyment due to the conduct of another tenant, or a person permitted on the property by another tenant, the landlord is expected to take reasonable action to protect the tenant's right to quiet enjoyment. Reasonable action may include issuing a warning/breach letter to the offending tenant and/or pursuing eviction of the offending tenant where appropriate in the circumstances.

In the case before me, the landlord points to the other tenants of the property being disturbed by the tenant and/or persons the tenant permitted on the property.

One of the complainants, in unit 2, focused his complaint on the tenant's "male friend" who had come to the property, obviously intoxicated, and engaged in loud and violent conduct, including threats to assault the complainant.

The tenants in unit 1 complained of the conduct of the tenant's guests and the tenant herself. The tenants in unit 1 focused their complaint on fighting between the tenant and her guest(s), numerous police visits to the property, and the tenant calling the police on the tenants in unit 1 in retaliation.

It is undisputed that the landlord has issued multiple warning or breach letters to the tenant and the tenant has acknowledged that other tenants on the property have been disturbed due to her own conduct, including substance use and noise, and being involved in a toxic relationship with a boyfriend that inflicted domestic abuse upon her.

The tenant argues that since the last incident of domestic violence in May 2022, when her ex-boyfriend assaulted her, which resulted in his arrest, criminal charges and conditions not to come near her or the property, there have been no further disturbances. The landlord acknowledges that to be accurate although the landlord suspects the quietness is due to the tenant facing eviction rather than a change in the tenant's relationship status and receiving counselling.

I find it undeniable that there has been a change in the tenant's relationship status as evidenced by the release orders of her ex-boyfriend that were submitted into evidence and there is unopposed evidence that the tenant's ex-boyfriend has not been to the property since his arrest in May 2022. After this change in relationship, I accept that the other tenants have not been subject to any more unreasonable noise, violence or fighting by the tenant or her ex-boyfriend.

While the tenant may be on her best behaviour since she is facing eviction, I also find it reasonably likely that the end of a toxic relationship that involved substance use and domestic violence is the reason the noise and disturbances have subsided.

Considering the tenant stated that she will ensure she abides by noise rules and not unreasonably disturb other tenants, and the tenant will ensure the peace bond against her ex-boyfriend is enforced by her, I am inclined to give the tenant the opportunity to demonstrate she has taken action to improve herself and she will not subject the other tenants to further disturbances. Therefore, **I cancel the 1 Month Notice and the tenant continues at this time.**

Although I have cancelled the 1 Month Notice, I recognize and agree with the landlord's concerns that their other tenants should not be subject to further disturbances by the tenant or persons she permits on the property. I am very cautiously optimistic that the tenant will ensure she does not unreasonably disturb the other tenants on the property given her change in relationship status, desire to improve herself and her assurances. Also, it is clear to me that the tenant's ex-boyfriend's conduct played a significant role in the complaints of the other tenants. However, the outcome of the criminal proceeding and the duration of the release orders or peace bond against the tenant's boyfriend is

unknown. Therefore, with a view to ensuring the other tenants are not subject to further disturbances and to foster a more successful tenancy relationship, I issue the following orders to the tenant pursuant to the authority afforded me under section 62(3) of the Act.

Effective immediately after receiving this decision, I order the tenant to:

- 1. Not engage in conduct that is unreasonably loud or otherwise unreasonably disturbing to other occupants of the property, at any time, but especially between the hours of 10:00 p.m. and 7:00 a.m.**
- 2. Not attempt to harass, intimidate or interfere with any other tenant of the property for the duration of the tenant's tenancy.**
- 3. Ensure any peace bond, release orders or any other judicial order against the tenant's ex-boyfriend put in place to protect the tenant and the landlord's property are enforced by the tenant. This includes the tenant reporting and calling for police assistance if there is any breach of the release orders or peace bond by the tenant's ex-boyfriend.**
- 4. If there is no peace bond, release orders or any other judicial order in effect against the tenant's ex-boyfriend, the tenant must not permit, allow or invite the ex-boyfriend that has been referred to in this proceeding to the rental unit or residential property for the duration of the tenant's tenancy.**
- 5. Not interfere with the landlord's restricted right to enter the rental unit for lawful purposes, including inspections and repairs. This includes responding to the landlord's questions and requests for access in a timely manner. The tenant retains the right to not give oral consent for entry and in such cases the landlord will be required to give the tenant a written 24 hour notice pursuant to section 29 of the Act.**
- 6. Refrain from referring to or calling the landlords by their race, skin colour or in any other discriminatory manner.**

Failure to comply with my orders above, shall be considered failure to comply with orders of the Director and basis for the landlord to pursue ending the tenancy under section 47(1)(l) of the Act.

Conclusion

I have cancelled the 1 Month notice and the tenancy continues at this time. However, I have issued several orders to the tenant that take effective immediately after she

receives this decision. Failure to comply with any of my orders shall be grounds for the landlord to pursue ending the tenancy under section 47(1)(l) of 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: November 30, 2022

Residential Tenancy Branch