



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated October 1, 2022 (1 Month Notice), and to recover the cost of the \$100 filing fee.

Tenant CB (tenant), co-landlord CP (landlord) and a witness for the landlord, AH (witness) attended the teleconference hearing. Although CP indicated that they were agent for the landlord, I have reviewed the tenancy agreement which lists both DK and CP as landlords. As a result, I find that both DK and CP are landlords under the Act as agent was not specified on the cover page of the tenancy agreement.

The tenant, landlord and eventually the witness when they were called into the hearing, were affirmed. The parties provided testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the Decision would be emailed to them.

Issues to be Decided

- Should the 1 Month Notice be cancelled?

- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2022 and converted to a month-to-month tenancy after July 31, 2022. Monthly rent of \$1,800 is due on the first day of each month.

A copy of the 1 Month Notice was submitted in evidence. The 1 Month Notice is dated October 1, 2022 and states an effective vacancy date of October 31, 2022, which would automatically correct to November 30, 2022 pursuant to section 53 of the Act. The tenant wrote that he received the 1 Month Notice on October 1, 2022. The tenant filed their application to dispute the 1 Month Notice on October 9, 2022, which is within the 10-day timeline provided for under section 47 of the Act.

The only cause listed on the 1 Month Notice is as follows:

- ☒ 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.

The Details of Cause(s) portion of the 1 Month Notice the landlord wrote the following:

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):
On Oct 1st 2022 between the hours of 0800-0900 at the above noted address, there was an incident caused the rental tenant Chad B [REDACTED]

As per the attached complaint from my guests, they required the shared laundry facility. Chad had left his clothes unattended in the washing machine overnight, so the guests carefully removed them and placed them on top of the washing machine. Upon discovering this, Chad proceeded to confront them by banging on their door. Interrupting their breakfast, he removed their clothes from the machine which was in use and scattered them all over the floor. While aggressively berating them, which left them feeling bullied, intimidated, threatened and unsafe.

The behaviour of the tenant unreasonably interfering and disturbing another occupant is completely unacceptable. This is not the first incident of aggressive behaviour and it is becoming most concerning. It directly affects not only the safety and well-being of the landlord's guests but also the reputation, peace and sanctity of the landlord's property. Due to this we are forced to ensure the safety of all future occupants by demanding the tenants eviction within 30 days of this writing.

The landlord presented a Mutual Agreement to End Tenancy dated 10/25/22 (Mutual Agreement) that was signed by co-tenant, KL. The parties provided different versions of whether the landlord knew that co-tenant KL had vacated the rental unit; however, the Mutual Agreement is not signed by the landlord, which I will address later in this Decision.

The landlord called his spouse as a witness, AH (witness). The witness was affirmed and confirmed that the first incident of aggression by the tenant was in the spring/summertime of 2022; however the date was not written down by the landlord or witness. The witness confirmed they did not witness the tenants arguing but did hear them yelling when they were next door cleaning their AirBnB, located beside the rental unit. The witness explained that the entrance of the AirBnB is via the shared laundry room that the tenant also uses. The witness stated that you are unable to enter the AirBnB without going through the shared laundry.

The landlord asked the witness if they feel safe when cleaning the AirBnB and the witness stated they did not if the tenant was home so the witness would watch out for the tenant's car and if it was there, they would not go into the AirBnB to clean it. The witness also stated that they made the AirBnB not available so that the witness did not have to see the tenant.

Although the witness described a "silly cookie incident" according to the witness, whereby the tenant allegedly found a full bag of cookies and decided to throw them into the AirBnB, I do not find this relevant to the hearing as I find that a self-described "silly cookie incident" would not result in the tenant's eviction.

As the tenant did not have any questions for the witness, the witness was thanked for their testimony and excused from the hearing.

The parties provided two different versions of the events of October 1, 2022, which prompted the 1 Month Notice. The landlord's version of events is listed on the bottom of page 2, above. The tenant's version is that they had their laundry inside the washing machine only to find their clothing removed with dirty items that did not belong to the tenant on top of their clothing. The tenant admitted that they are resentful that the landlord operates an AirBnB that the tenant claims interfere with their right to quiet enjoyment, including using laundry at the same time or moving the tenant's laundry.

The tenant did not deny that they removed the laundry placed in the washing machine by guests of the AirBnB on October 1, 2022. The tenant denies harassing the AirBnB guests but did admit to knocking on the door of the AirBnB to find out if they removed the tenant's laundry, which the guests confirmed was what happened. The tenant denies pounding on the guests' door and denied that they raised their voice. In addition, the tenant denied making any threats to the AirBnB guests.

The tenant testified that this ex-girlfriend, the co-tenant, KL, decided to leave the tenant in May 2022. The tenant stated that he confided in the landlord that he was heartbroken, and that the landlord knew the tenant had vacated and that they had broken up. The tenant also stated that they found it very odd that the landlord would provide a Mutual Agreement from a co-tenant that had vacated in May 2022 and has not paid rent since moving out in May 2022. The landlord responded by stating that co-tenant KL has never informed the landlord that they were leaving the rental unit permanently.

The landlord presented the following evidence from the AirBnB website, which was feedback provided on October 1, 2022, the date of the incident. The AirBnB guests write as follows:

Oct 1, 2022

Sandra

We would like to inform you of an unpleasant incident this morning. This morning my son took out some wet laundry out of the washing machine that had been left by the upstairs occupant all night. The damp laundry was placed on the dryer so that we could use the "shared" utilities. Our breakfast was then interrupted by the upstairs occupant who pounded on our door and angrily asked "Did you do this". My wife had answered the door. She is in her 60's with white hair. We explained the situation, but he took my son's laundry out of the machine and scattered it on the floor. Throughout he was very threatening. We will now be travelling with wet laundry. This has certainly ruined our stay, and we would be interested in your response.

The above statement was attached to the 1 Month Notice in support of the one cause alleged by the landlord.

The tenant writes in their application that they have never received any written complaints from the landlord regarding their behaviour, prior to receiving the eviction notice, which is the subject of this dispute.

The 1 Month Notice does not include the name of co-tenant KL and lists only the name of tenant. The parties confirmed that there are no written rules as part of the tenancy agreement, which limit the access to the laundry by the tenant.

Analysis

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

Once the tenant disputes a 1 Month Notice within the 10-day timeline, which I find the tenant did by applying on October 9, 2022, to dispute the October 1, 2022 1 Month Notice, the onus of proof reverts to the landlord. Accordingly, if the landlord fails to provide sufficient evidence of the one cause alleged on the 1 Month Notice, the 1 Month Notice will be cancelled, and the tenancy shall continue.

Further to the above, I afford little weight to the Mutual Agreement as the landlord failed to sign the Mutual Agreement and failed to include their name on the Mutual Agreement. As such, I find the contract is incomplete and not enforceable as a result. At the very least, if the landlord intended to rely on a contract such as a Mutual Agreement, that contract must be signed by both parties.

In addition, as the landlord failed to list co-tenant KL in the 1 Month Notice, I find it more likely than not that the landlord was aware that co-tenant KL was no longer residing in the rental unit and had that the landlord had no issue accepting rent from tenant CB only. Therefore, I make the finding that the tenancy for the KL ended in May 2022 when they vacated the rental unit and that the parties in effect, formed a new tenancy under the same terms, except without co-tenant KL who vacated. As such, I find that former co-tenant KL is no longer able to sign an enforceable Mutual Agreement given that their tenancy has already ended by vacating the rental unit. Therefore, the Mutual Agreement before me will not be enforceable should the landlord subsequently sign it based on the above.

I find the AirBnB is not covered under the Act pursuant to section 4(e) which states:

What this Act does not apply to

4 This Act does not apply to

(e) **living accommodation occupied as vacation or travel accommodation,**

[emphasis added]

Therefore, I find the guests of the AirBnB are simply guests of the landlord in the residential property that have no right to impact or touch the tenant's belongings in the laundry area. I make this finding based on the fact that the tenant has rights to the laundry as part of their signed tenancy agreement, which is protected by section 28 of the Act.

I also find that if the arguing between the co-tenants was so concerning for the landlord, that they would have either recorded the fighting between co-tenants CB and KL and submitted that as evidence or at the very least wrote down the date and time of the incident and follow up with a written warning regarding the impact that may have had on the landlord in May 2022, which the landlord did not do. I also note that the landlord failed to include any written rules regarding access to the laundry on specific days or times as part of the tenancy agreement.

Finally, I find the landlord made the choice to rent their rental unit to the tenant, while concurrently operating an AirBnB that can only be accessed by entering the shared laundry room used by the tenant. I find that the tenant's laundry access is part of the tenancy agreement and is protected by section 28 of the Act in terms of use and access. There is insufficient evidence before me that the tenant has waived any rights to their access to the laundry.

Given the above, I find the landlord has failed to meet the burden of proof and I cancel the 1 Month Notice as a result. Pursuant to section 62(3) of the Act, I make the following order:

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction of **\$100** from a future month of rent in full satisfaction of the recovery of the cost of the filing fee, pursuant to sections 62(3) and 72 of the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act. The tenant has been granted a one-time rent reduction of \$100 from a future month of rent in full satisfaction of the recovery of the cost of the filing fee.

This Decision will be emailed to both parties.

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: November 16, 2022

Residential Tenancy Branch