



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 19, 2022, and to recover the cost of the filing fee.

Only the landlord’s agent and landlord’s witness appeared. The tenant did not attend at any point during the hearing. The digital file shows that on January 17, 2023, the Residential Tenancy Branch confirmed with the tenant that the hearing was still required. The tenant was also sent a reminder notification on February 21, 2023, by email to the email address provided by the tenant for the hearing schedule today February 24, 2023 at 1:30 PM.

I am fully satisfied that the tenant is fully aware of the hearing and has failed to attend. Therefore, the hearing proceeded in the absence of the tenant.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I have amended the style of cause to add the correct name of the landlord, as shown in the Notice.

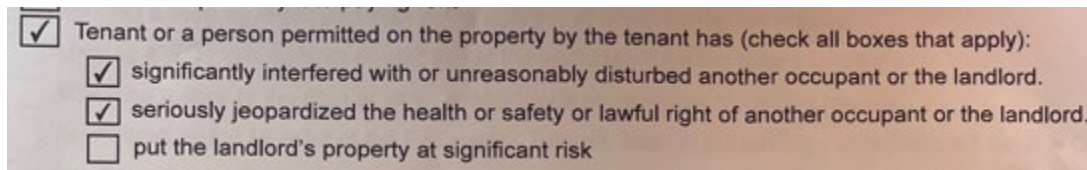
Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 28, 2022, as that date is earlier than the Act allows that date automatically corrects to October 31, 2022, under the Act. Filed in evidence by the tenant is a copy of the Notice which is in compliance with section 52 of the Act.

The reason stated in the Notice was that the tenant has:



☒ 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

The witness CI for the landlord testified that the tenant was harassing another occupant in the building by painting swastikas on the door of the occupant's rental unit. CI stated this went for a period of time and they had to repaint the occupant's door at least 2 dozen times. CI stated that glue would also be put on the occupant's door and food.

The witness CI for the landlord testified that they did not know who was doing this to the occupant at first, until the occupant had captured the tenant on camera painting the swastika.

The landlord's agent testified that the video was reviewed by CI and the police have the copy provided to them from the occupant. The landlord's agent testified that the tenant has been charged with criminal harassment and mischief \$5,000 or under. The agent stated that matter is still before the Provincial Court. The landlord's agent stated the tenant significantly interfered with and unreasonably disturbed the other occupant by the ongoing harassment.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord's witness and the landlord's agent that landlord has grounds to end the tenancy for the reasons within the Notice. I find it unreasonable that the tenant would harass another occupant by continuing to paint offensive swastikas on their door or place glue or food upon the door.

While the tenant may not have been convicted on the criminal charges as of today's date. However, that is not for me to consider as the standard of proof is different under the Act, it is on a balance of probabilities, which means more likely than not.

I find the Notice issued has been proven by the landlord and is valid and enforceable. I find the tenancy legally ended on October 31, 2022, the correct effective date of the Notice. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: February 24, 2023

Residential Tenancy Branch