



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated September 7, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's son TB, the Tenant, and the Tenant's advocate SM attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents. The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced in or around April 2015 and is month-to-month. Rent is currently \$735.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$335.00.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is signed by TB on behalf of the Landlord and has an effective date of October 31, 2022. The stated reasons for this notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The details of cause on the One Month Notice are as follows (portions redacted for privacy):

I [TB] was working on the deck of [unit number] so I parked my truck by the stairs to [unit number]. He came and order me to move my truck. I asked him to park anywhere politely. He started to swear at me and threatens me. I was feeling very unsafe. Others tenant were very scared and felt very unsafe. They were concerned about my safety. There is no assigned parking. Tenants park in any open space. (*sic*)

The Tenant acknowledged receipt of a copy of the One Month Notice on September 9, 2022 via registered mail.

TB testified that on September 7, 2022, he was working on a tenant's deck at the rental property and had parked in a parking space closest to that particular unit. According to TB, the Tenant came back to the rental property during lunchtime and "went off", yelling, screaming, and calling TB all kinds of names. TB stated that the Tenant then cursed more, slammed his door, and drove off. TB estimated that the entire interaction lasted about two to three minutes.

TB stated that the parking lot was empty and the Tenant could have parked anywhere. TB testified that it wasn't the first time the Tenant got mad at TB or another tenant. TB stated that other tenants were home at the time of the incident and felt scared and unsafe. TB stated that the Tenant had yelled at other tenants and the Landlord previously. TB referred to three witness statements from other tenants submitted into evidence by the Landlord (the "Witness Statements"). TB testified that he made a report at the police station about the incident.

In response, the Tenant testified that the parking issues between him and TB started approximately two years ago. The Tenant stated he had previously put up a sticker designating the parking spot as his. The Tenant stated that on one occasion, he saw TB flipping the Tenant's placard. According to the Tenant, TB told the Tenant that he cannot designate a parking spot, and the Tenant responded that he had gotten permission from the Landlord to do it. The Tenant stated that every time TB goes out of his way to park in the Tenant's spot because the Tenant had embarrassed TB in front of a neighbour that time.

The Tenant testified that on September 7, 2022, he was coming home at lunchtime to drop off a prescription. The Tenant testified he saw TB parked in his spot. The Tenant described the heated exchange that he subsequently had with TB, with both men using profanities. The Tenant stated that after he dropped off his prescription, he told TB "if it's still there when I get back I'll see if I can tow it", then the Tenant left the property. According to the Tenant, the whole incident was around 30 seconds.

The Tenant stated that he felt bad about swearing and that if others in the building were upset by it. The Tenant stated that he has only had civil and polite interactions with the other tenants who had submitted the Witness Statements. The Tenant testified that it was a short incident, and since the incident the Tenant's interactions with TB have been civil. The Tenant stated that the Landlord may be exaggerating the incident in order to evict the Tenant and raise the rent.

TB stated that the Tenant called him a derogatory name when he went to collect the rent on October 1, 2022. TB stated that there is no designated parking on the property and that it is “first come, first served”. TB denied that the Tenant was being evicted for more rent. TB stated that the Tenant had also phoned the police and sent them to TB’s house one occasion.

The Landlord denied having given the Tenant permission to designate a parking spot.

The Tenant denied having sent police to TB’s house.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month’s notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant’s notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant’s notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord’s notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice on September 9, 2022, in accordance with section 88(c) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until September 19, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on September 9, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the reasons stated in the One Month Notice correspond to sections 47(1)(d)(i) and (ii) of the Act, which state as follows:

Landlord's notice: cause

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, [...]

Based on the parties' testimonies and the Witness Statements submitted by the Landlord, I find the Tenant had yelled and screamed at TB on September 7, 2022 during a dispute about parking. I find the Tenant was upset due to where TB had parked that day. I find the Tenant swore at TB, slammed his door, and threatened to call a tow truck.

While I cannot condone the Tenant's behaviour, I find the incident was a strictly verbal altercation about parking and had lasted at most a few minutes. As such, I do not find the Tenant to have caused a significant interference or unreasonable disturbance warranting eviction under section 47(1)(d)(i) of the Act. Similarly, I do not find the incident to have "seriously jeopardized" the health or safety or a lawful right or interest of the Landlord or other tenants such that the tenancy should be terminated under section 47(1)(d)(ii) of the Act.

I accept that based on TB's testimony and the Witness Statements, this was likely not the first time that TB or other tenants have witnessed angry outbursts from the Tenant. However, I find there is insufficient evidence about when and how those other incidents might have occurred.

More importantly, I find the Landlord did not give the Tenant any written warnings about the Tenant's conduct prior to issuing the One Month Notice. I find the Tenant was not put on notice that a continuation or repeat of the conduct complained of by the Landlord could result in the Landlord making an application to end the tenancy.

Based on the foregoing, I conclude the Landlord has not proven sufficient cause warranting an eviction under sections 47(1)(d)(i) or (ii) of the Act at this time. Accordingly, I order that the One Month Notice be cancelled and of no force or effect.

The Tenant is cautioned that further repetition or continuation of the behaviours complained of by the Landlord could result in the Landlord issuing another one month notice and terminating this tenancy for cause.

2. Is the Tenant entitled to recover the filing fee?

As the One Month Notice has been set aside on this application, I award the Tenant reimbursement of the filing fee in accordance with section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of March 2023.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act, the regulations, and the parties' tenancy agreement.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of March 2023 on account of the filing fee awarded.

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 13, 2023

Residential Tenancy Branch