



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding Parksville Lions Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RR, RP, OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice").

Both parties appeared or were represented at the hearing. The parties were affirmed. The hearing was held over two dates and an Interim Decision was issued. The Interim Decision should be read in conjunction with this decision.

Both parties called one witness each during the hearing. The witnesses were excluded until called to testify. The witnesses were affirmed and subject to direct examination and cross examination.

Issue(s) to be Decided

1. Should the One Month Notice be upheld or cancelled?
2. If the One Month Notice is upheld when should the Order of Possession take effect?
3. Award of the filing fee.

Background and Evidence

The tenancy started in July 2013. The tenant is currently required to pay rent of \$536.00 on the first day of every month. The landlord is a housing society and the rent is subsidized. The rental unit is a townhouse located in a housing complex where the landlord provides housing to low income families.

The tenant occupies the rental unit with her two sons who are 14 and 16 years old. The crux of this dispute involves the tenant and her 14 year old son, whom I have referred to as "NC" in this decision.

On October 12, 2022 the landlord attached the One Month Notice to the rental unit door. The One Month Notice has a stated effective date of November 30, 2022 and indicates the following reasons for ending the tenancy:

- ☒ 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.

In the Details of Cause, the landlord wrote (with names omitted by me for privacy reasons):

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):

The son of this tenant (-----) has become increasingly violent and now the neighbors are not feeling safe and secure in their home. On Monday, October 11, 2022 the tenant(-----) and her son(-----) broke through the door of a neighbor and were fighting on the living room floor. RCMP were called, file number 2022-10108. Door frame and mail slot were damaged. There have been other incidents, son dragging mom by the hair, son starting a fire, son pushing a tenant, son threatening a tenant. The tenants are very concerned that these incidents will only get worse.

I heard from both parties with respect to the events of October 11, 2022. I did not permit the landlord to introduce evidence concerning the alleged dragging, fire starting, pushing, or threats referred to in the Details of Cause as the landlord did not provide sufficient particulars, such as dates or places, in the details of cause.

Landlord's evidence

The landlord's agent acknowledged she did not personally witness the events of October 11, 2022 but relied upon reports from other tenants in the complex. The landlord called the tenant residing in a unit two doors away from the rental unit as a witness.

Landlord's witness KH

KH testified that she was in her unit when she heard a raucous outside her front door. KH described the raucous as being screaming and banging sounds. KH then heard a

slamming sound and an electronic charger came through the mail slot in her door. KH was only partially clothed and the entry door then opened. The tenant and her son NC came in and were pushing and wrestling with each other trying to get electronic charger. The tenant's son was successful in getting the charger and then he left KH's unit. The tenant stayed a little while longer in KH's unit and was crying. KH told the tenant to leave. KH then called a neighbour who came over to be with KH. KH proceeded to call the police. The police attended and took a statement from KH. The police then went over to the tenant's rental unit.

KH reported the matter to the landlord and informed the landlord she was afraid. KH also provided the landlord with photographs showing a damaged mail slot and a damaged door frame.

Under cross examination by the tenant, KH stated she believed the door frame was cracked during the incident as the door frame was not broken during her tenancy; although, KH stated it was possible the crack existed before her tenancy started.

Under cross examination, KH acknowledged that she had sent the tenant a text message before the incident. KH did not recall the specifics of the text message but vaguely recalled she had offered the tenant support after hearing the tenant was having a difficult time.

Tenant's version of events

The tenant testified that on October 11, 2022 she was returning home from a trip with her two sons and it had been a difficult trip. KH had texted the tenant offering her support. The tenant called her friend (witness NK) and asked him to come over so that he could support her in dealing with her sons.

The tenant had taken an electronics charger away from NC earlier in the day. When the tenant arrived home with her sons and was unloading items out of the back of her vehicle, NC saw the charger and tried to grab it. The tenant was able to get the charger first but then NC started grabbing at her. In an effort to get NC to stop grabbing at her, the tenant then went over toward KH's unit to put it in KH's mail slot but NC pursued her. After putting the charger through KH's mail slot, it looked as NC would going to enter KH's unit because NC's hand was on the door knob. The tenant grabbed NC's arm and hand in an effort to stop him from entering KH's unit but somehow the door opened and the two of them stumbled into KH's unit. The charger was laying on the floor of KH's unit and both she and NC tried to grab it and it ended up breaking in half.

NC then left KH's unit. The tenant stayed a little while longer as she was crying. The tenant saw KH covered in a blanket and KH showed her that she was only wearing shorts underneath. KH told the tenant "That is not ok". The tenant apologised to KH and left.

The tenant acknowledged that NC is large and heavy, at approximately 6'1" and over 200 lbs but she considers her friend NK to be stronger than her son. The tenant acknowledged that she has difficulty physically restraining NC at this point.

The tenant acknowledged that she made a poor decision by putting the charger through KH's mail slot; however, the tenant is of the position KH was untruthful in alleging her mail slot and door frame were broken as a result of the incident.

The tenant stated that her son NC suffers from post concussion syndrome which has slowed his thinking, he gets aggravated more easily and he less impulse control; however, they have been making strides to improve his behaviour lately by making sure he takes his medication, gets more physical activity and counselling.

Tenant's witness NK

The tenant called her friend NK as a witness.

NK testified that on the day of the incident, the tenant had telephoned him when she was on her way home and asked him to meet her at her house to help her with her sons. NK had arrived and was standing in the driveway when he saw NC trying to get the charger from the tenant at the back of the tenant's vehicle. NK then saw the tenant take the charger toward KH's unit, while NC closely followed behind. As the tenant and NC got in front of KH's door his vision was somewhat obscured but their bodies. NK stated he saw the tenant's arm reach toward KH's door; however, he did not hear any bang or cracking that would indicate the door of KH's unit was broken.

The landlord asked NK why he did not try to intervene and help the tenant by restraining NC. NK responded that he does not want to physically restrain a child and if the tenant had given him the charger then NC would have tried to grab at NK.

The landlord pointed out that more recently the tenant installed surveillance cameras without consent which was contrary to the tenancy agreement and the landlord had advised the tenant to not install cameras on the building except for a doorbell type of camera. The cameras installed by the tenant were directed toward KH's unit and KH

reported this invasion of privacy to the landlord and the police. The tenant acknowledged that she installed the cameras despite the landlord not giving consent but was of the position it was justified since she had to protect herself from any future false evidence coming from KH. The cameras were eventually removed by KH's boyfriend.

Before the hearing ended, I canvassed the landlord and the tenant with respect to an effective date for an Order of Possession should I provide one to the landlord. The landlord requested an Order of Possession effective on April 30, 2023. The tenant requested she be permitted to occupy the rental unit for at least three months.

In addition to oral testimony, I was provided with documentation by both parties.

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 burden of proof is the civil standard of on the balance of probabilities, or more likely than not.

Every tenant is entitled to quiet enjoyment of their rental unit and the residential property under section 28 of the Act and a landlord has an obligation to protect that entitlement. The right to quiet enjoyment includes privacy, freedom from unreasonable disturbance and the right to use common areas free from significant interference. Where a landlord is aware that one tenant has suffered a loss of quiet enjoyment by another tenant, or a person that other tenant permits on the property, the landlord is expected to take action against the offending tenant, which may include eviction. Accordingly, section 47(1)(d) of the Act provides a mechanism for a landlord to end the tenancy of the offending tenant under section .

The reasons for ending the tenancy, as stated on the One Month Notice, correspond to section 47(1)(d)(i) and (ii) of the Act, as set out below:

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,

NC is the tenant's minor child and a person that is permitted on the residential property by the tenant. Accordingly, the tenant is responsible for not only her own conduct while on the residential property but that of her sons, including NC.

At issue is whether the tenant and/or her son NC unreasonably disturbed another occupant of the residential property or seriously jeopardized the lawful right of another occupant on October 11, 2022.

Both parties presented evidence concerning the events of October 11, 2022. While the tenant denied responsibility for causing any damage to the mail slot or door frame of KH's unit, I am of the view that it is unnecessary for me to make a determination as to whether damage was caused. The landlord is not pursuing the end of this tenancy due to damage caused. Rather, the landlord is seeking an end to the tenancy due to unreasonable disturbance or serious infringement of KH's lawful rights by the tenant and/or NC.

I find the evidence put forth by KH and the tenant is largely consistent in material aspects, with the exception of the infliction of damage to the property. To illustrate:

- The tenant admitted that she and her son were physically vying for the electronics charger and after the tenant put the charger through KH's mail slot the tenant was trying to stop NC from entering KH's unit by grabbing at his arm and/or hand. I find these statements consistent with KH describing a "raucous" outside of her door just prior to the tenant and NC entering her unit.
- The tenant described that she and NC stumbled into KH's unit when the door opened and they were both grabbing for the charger when it broke in half. I find these statements consistent with KH describing the tenant and NC wrestling over the charger in her unit.
- KH testified the tenant and KC abruptly entered while she was only half dressed. I find this statement consistent with the tenant's testimony that KH was covered by a blanket and pointed out she was only wearing shorts.

I find the evidence is abundantly clear that the tenant and KC entered KH's unit uninvited and without consent. Although KH may have offered "support" to the tenant in text messages earlier in the day, I find a reasonable person would not construe that offer of "support" to mean the tenant and her son could barge into her unit without warning or consent and invade KH's right to privacy and peace and quiet. Therefore, I conclude the tenant and her son unlawfully entered KH's unit on October 11, 2022.

To exacerbate the situation, it is clear to me that the tenant and her son then proceeded to fight or wrestle with each other in an effort to get the charger while they were in KH's unit. I find that a reasonable person would likely consider that experience to be unreasonably disturbing and frightening.

In light of the above, I find the tenant is responsible for unreasonably disturbing another occupant and seriously jeopardizing another occupant's lawful right to privacy, security and peace and quiet while in their own unit. Therefore, I find the landlord had basis to issue the One Month Notice and I uphold it.

Having upheld the One Month Notice, I dismiss the tenant's request that I cancel it.

I make no award to the tenant for recovery of the filing fee.

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the One Month Notice and dismissed the tenant's application to cancel it. Upon review of the One Month Notice, I find it is the approved form and is duly completed so as to comply with the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

I grant the landlord an Order of Possession effective on April 30, 2023 as requested by the landlord so that other occupants of the property are not subject to further harassment or disturbances from the tenant or her son(s).

Conclusion

The tenant's request for cancellation of the One Month Notice is dismissed and the landlord is provided an Order of Possession effective on April 30, 2023.

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: March 31, 2023

Residential Tenancy Branch