



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HOPEHILL LIVING IN COMMUNITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. Two Landlords and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by attaching a copy to the Tenant's door on September 27, 2022, the Tenant confirmed receipt, deemed served on September 30, 2022;
- the Tenant's Notice of Dispute Resolution Proceeding package personally served on October 26, 2022, the Landlord confirmed receipt, served on October 26, 2022; and,
- the Landlord's evidence package was served by regular mail on February 7, 2023, the Tenant confirmed receipt, deemed served on February 12, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is not successful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties and the tenancy agreement confirmed that this tenancy began as a fixed term tenancy on January 14, 2022. The fixed term ended on July 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$775.00 payable on the first day of each month. A security deposit of \$387.50 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The effective date of the One Month Notice was October 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

The incident occurring on September 22, 2022, resulting in police file #VA-22 [file number].

This incident violates section 23 of the Residential Tenancy Agreement, "The tenant agrees that if any tenant causes unreasonable...disturbances the landlord may end the tenancy. This includes activity that has or is likely to adversely affect the...security, safety or physical well being of another tenant. Additionally, this incident violates the agreed upon Crime Free Housing Addendum.

Section 23 of the tenancy agreement states:

23. Conduct

The tenant agrees that if any tenant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy. This includes activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another tenant or the landlord.

The Landlord alleges that on September 22, 2022 the Tenant chased and pushed 78-year-old resident-A. The Landlord stated resident-A was able to brace herself on a handrail, but the Tenant continued to chase her. Resident-A went into resident-B's suite and the door was locked. The Landlord stated the Tenant banged on the door, then the police were called.

The uploaded police report states in part:

Assault-Common – Completed

No drugs/alcohol involved

Status: INSUFFICIENT EVIDENCE TO PROCE

Offences committed: ASSAULT-COMMON – COMPLETED

MENTAL HEALTH ACT-SEC 28 – COMPLETED

DISTURBED PERSON/ATT SUICIDE – COMPLETED

Weapon used: PHYSICAL FORCE

On September 22, 2022, at approximately 1940 hrs, while VIC [name] was at the common area mailbox of [address] (senior independent living facility) when [REDACTED] suddenly ran at her, pushing her in the back, and chasing her down to the second floor, where [name] ran in COM [REDACTED] suite [REDACTED]. At 1949 hrs [REDACTED] called police and PCs [number, name] and [number, name] attended. [name] and [REDACTED] were clearly shook up and scared about the seeming escalation of violence and that [REDACTED] had been fixated on [REDACTED] and [REDACTED] PCs were unable to locate [REDACTED] but spoke to staff who advised they were aware of ongoing issues and believed that [REDACTED] had MH issues.

No injuries. Safety plan discussed. [REDACTED]

... Both women appeared shaken up though [name] stated she had no injuries from the assault. [name] advised that [REDACTED] had had aggressive outbursts on multiple previous occasions but this was the first instance where he had made physical contact.

The Landlord uploaded four witness statements. Two of the witness statements are dated January 11, 2023. None of these witnesses attended the hearing.

The Landlord said the incident was violent, and the Tenant has confronted resident-A before. The Landlord relies on resident-A's witness statement.

The Landlord relies on resident-B's witness statement stating she has observed aggressive behaviour displayed by the Tenant, and she has observed him watching her through her window. This witness statement is dated September 28, 2022; however, it refers to other earlier events.

The Tenant testified that he tugged resident-A's hoodie rather than pushed or punched her in the back as described by the Landlord. The Tenant described that there are two security cameras in the lobby which are live in their building and, he stated, that evidence should have been disclosed to this process. He said right now, it is just he said, she said.

The Tenant maintained that he followed resident-A down the stairs because he thought she may be the resident who lives directly below him and has been harassing him over the last year. The Tenant stated that resident-A called out twice, "let me in, let me in", and she went into resident-B's rental unit and slammed the door on his face. He said he banged on the door, he did not try to open the door. The Tenant assumed it was resident-A's rental unit, but someone else opened the door for resident-A.

The Tenant was told by another resident that resident-A lives below him. He said he did yell at her in the garden, but again he thought she was the person who lived below him. The Tenant now knows that information is wrong. His mental health worker told him it is better to apologize. He said, *"if I was guilty of all that stuff, I wouldn't even bother coming to this hearing right now."* The Tenant stated that he read in the Landlord's evidence that another resident said he was dragging his furniture around in his rental unit. The Tenant maintained that he has no furniture, he only has a trunk.

The Tenant stated three days after the stairwell incident, he was placed in the psychiatric ward for one month. He said he has neither harassed anyone nor asked anyone for money while living in the residential property. The Tenant stated he sees his mental health worker once or twice per month. At present he was put on a medication that he is having problems with, so that maybe changing again. He stated he also has a lot of food allergies, and sometimes this has consequences with his behaviours.

The Landlord confirmed that the security cameras no longer record because there were past issues with privacy violations. The Landlord has followed up on the Tenant's past reports of being harassed, but they did not find any evidence that there were multiple people residing in the rental unit below the Tenant. The Landlord has communicated with the Tenant's mental health worker and has tried to find a way for the Tenant to remain in his unit and at the same preventing violent outbursts from him. The Landlord has concerns because the Tenant has missed some mental health worker appointments. She described that they need a balance where everybody who lives in the residence is safe and well. They do not condone violence.

The Landlord is seeking an Order of Possession, the Tenant wants the Landlord's One Month Notice cancelled.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation. It states:

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, or*
 - ...
- (2) *A notice under this section must end the tenancy effective on a date that is*
 - (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.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- ...

The Tenant was deemed served with the One Month Notice on September 30, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on October 8, 2022 which was within the 10 days after receiving the One Month Notice.

The Landlord alleged that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The Landlord gave evidence about an event that occurred on September 22, 2022 where she described that the Tenant chased and pushed a 78-year-old occupant of the residential property. The Landlord stated the occupant was able to brace herself on a handrail, but the Tenant continued to chase her. This occupant got herself into another occupant's rental unit, and they locked the door. The Tenant banged on the door, then the police were called.

The police report's narrative was similar to the Landlord's description of the event. The police report went on and said the women were shaken up, but there were no injuries from the assault.

The Tenant testified that he tugged the occupant's hoodie. He did not push or punch her in the back. He hoped that security camera footage would be available, but in the hearing, he was told that the security cameras are no longer live due to issues of privacy. The Tenant has had problems with the resident who lives directly below him, and he thought the woman who he followed was that person. He also said he had yelled at her previously, but again, it was because he thought she was the person who lived below him. He now knows he was given misinformation.

The Landlord uploaded witness statements from the occupant the Tenant followed, and from the occupant whose suite she ran into. Neither of these people came to the hearing to speak to their statements.

I do not doubt that some version of events occurred on September 22, 2022, the Tenant provided his story. The Landlord's evidence was a recitation of the police report, and the occupants did not attend the hearing to give evidence. The Tenant has had past problems with the downstairs occupant, and it seemed this fueled his actions that day. He knows now that he was talking/yelling at the wrong occupant.

The Tenant is **warned** that it is not his job to police the residential property and he must always take his reports or concerns to the Landlord. I find where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Landlord has not proven on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, or seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. The Landlord's One Month Notice is canceled, and the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 23, 2023

Residential Tenancy Branch