



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding LMLTD HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant November 09, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated October 31, 2022 (the "Notice")
- To recover the filing fee

D.T. and N.H. (the "Landlords") appeared at the hearing for the Landlord. J.M. and S.A. appeared as witnesses at the hearing. Nobody appeared at the hearing for the Tenant. The hearing proceeded for 29 minutes. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlords and witnesses provided affirmed testimony.

I removed D.T. from the style of cause because D.T. is only an agent for the Landlord.

The Tenant submitted the Notice and a breach letter as evidence. The Landlord submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlords confirmed receipt of the hearing package.

D.T. testified that the Landlord's evidence was posted to the door of the rental unit March 07, 2023. J.M. testified about service; however, I do not place any weight on

their testimony because I could hear D.T. telling J.M. the answers to my questions in the background which defeats the entire purpose of calling a witness.

I accept the undisputed testimony of D.T. and find the Landlord's evidence was served on the Tenant in accordance with section 88(g) of the *Residential Tenancy Act* (the "Act") on March 07, 2023. The Tenant is deemed to have received the evidence March 10, 2023. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

The Landlords and witnesses were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. Rent is due on or before the first day of each month.

The Tenant submitted the Notice. The Notice has an effective date of November 30, 2022. The grounds for the Notice are:

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

The Notice includes details of the grounds for the Notice.

The Landlords testified that the Notice was posted to the door of the rental unit October 30, 2022.

D.T. testified as follows. The Tenant has been causing noise disturbances to S.A. since around May of 2022. The noise disturbances are constant. The Tenant is banging on walls and floors, yelling, screaming and dropping things onto S.A.'s balcony breaking S.A.'s belongings. D.T. has heard the Tenant and their daughter fighting in the rental unit while walking past the rental unit. S.A. has submitted written complaints about the noise disturbances.

N.H. testified that S.A. has called them and complained about the noise disturbances. N.H. testified that the Tenant has been given caution notices about the issue.

S.A. testified about the Tenant causing noise disturbances constantly including until 4:00 a.m. S.A. described the noise disturbances as stomping, dragging furniture, arguing, fighting, hammering on the floor and screaming. S.A. testified that one time the stomping was so bad their light fixture came out of the ceiling. S.A. testified that they have called the police about the disturbances and as a result the Tenant hammered on the floor. S.A. testified that they have had to purchase items to keep the noise out and have had to sleep elsewhere due to the noise. S.A. testified that they tried to communicate about this issue with the Tenant; however, the Tenant would not engage with S.A. S.A. testified that the disturbances have gotten worse. S.A. testified that the Tenant drops items on S.A.'s balcony and when S.A. raises this as an issue the Tenant yells and screams at S.A.

N.H. testified that the Tenant has not paid rent since being issued the Notice and sought an Order of Possession effective two days after service on the Tenant.

Analysis

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I dismiss the Application without leave to re-apply because the Tenant did not appear at the hearing to provide a basis for the Application.

The Notice was issued pursuant to section 47 of the *Act*.

I accept the undisputed testimony about service of the Notice and find the Tenant was served in accordance with section 88(g) of the *Act* on October 30, 2022. The Tenant is deemed to have received the Notice November 02, 2022, pursuant to section 90(c) of the *Act*.

Based on the undisputed testimony of D.T., N.H. and S.A., I find the Tenant has significantly interfered with and unreasonably disturbed S.A., another occupant of the building. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*.

Given the above, I uphold the Notice.

Section 55(1) of the *Act* states:

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.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and is issued an Order of Possession effective two days after service on the Tenant.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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 24, 2023

Residential Tenancy Branch