



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. 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;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Legal Counsel and the Tenant attended the hearing at the appointed date and time. The Landlord called into the hearing about 35 minutes into the hearing, and the Landlord's Property Manager came into the hearing as a witness. 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.

The Landlord served the Tenant with the One Month Notice on November 10, 2022 by posting the notice on the Tenant's door. The Tenant's Notice of Dispute Resolution Proceeding confirms receipt of the One Month Notice. I find the One Month Notice was sufficiently served on the Tenant on November 10, 2022 according to Section 71(2)(b) of the Act.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on November 29, 2022, Canada Post Tracking number on cover sheet of decision, the Landlord's Legal Counsel confirmed receipt, deemed served on December 4, 2022; and,
- the Landlord's evidence package served by registered mail on January 19, 2023, Canada Post Tracking number on cover sheet of decision, the Tenant confirmed receipt, deemed served on January 24, 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.

Preliminary Matters

The Landlord had difficulty calling into this hearing as they were out of the country on the hearing date. After canvassing service of hearing documents, Legal Counsel for the Landlord stated she had just received email confirmation from her client that she could attend in their absence and that there would be no procedural fairness issue in this matter.

The Tenant stated that the Landlord tried to amend her evidence in a previous file. That file number is noted on the cover sheet of this decision. The previous hearing was held on December 5, 2022, and the decision was rendered on January 11, 2023. The Landlord's amendment is not discussed in the decision. The Landlord's amendment and the Tenant's dispute resolution application is the topic of this decision.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Is the Tenant entitled to recovery of the application filing fee?

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 Tenant1 testified that this periodic tenancy began on May 1, 1997. She is the only listed occupant of the two-bedroom rental unit. Legal Counsel stated that monthly rent is \$883.50 although she was unclear about the rent amount now. The rent is payable on the first day of each month. The Tenant1 stated her monthly rent is \$1,356.00. A security deposit of \$392.50 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 Tenant1 has allowed an unreasonable number of occupants in the unit, Tenant1 has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, Tenant1 has put the landlord's property at significant risk; Tenant1 or a person permitted on the property by the Tenant1 has caused extraordinary damage to the unit; and Tenant1 has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was December 31, 2022.

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

The following violations of the tenants lease have occurred;

Conduct (section 17 of the lease)

Have been aggressive with all four property managers;

A and EB

NL

TS

E and SO

*[Tenant1] has held one of our property managers against his will (TS)
resulting in TS quitting his job;*

[Tenant1] and [Tenant2] have caused smoke / fire damage to the point that the fire department had to attend and clear the building of smoke with large fans.

The smoking by [Tenant2] has significantly interfered with the right to quiet enjoyment by two of our property managers, ruining their sleep night after night, not just occasionally.

[Tenant2] has sworn at our first property manager (with witnesses that we call) (AJB & gardener) and at the owner (TH).

[Tenant1] has sworn at our third Property manager (TS, for which we have witnesses) and our present property manager (EO).

[Tenant1] & [Tenant2] consistently break the most basic and common rules such as bringing dogs onto the property, even though they know they are not allowed to.

Additional Occupants (Section 13 of the lease);

Regardless of how many times we have told [Tenant1] (& previous tenant named) she has her sister still living in the suite without the landlords consent.

Legal Counsel submitted there is a history with the Tenants' behaviour, and that it remains consistent over time. She referred me to dated documentary evidence to support this statement.

Legal Counsel pointed to an incident report dated August 18, 2020 where the Landlord's evidence alleges the Tenant caused a disturbance to the Landlord and staff.

A caution notice to Tenant1 dated October 19, 2021 reports that "*tenant boiling water with cinnamon (to mask smells of??) left water boiling and left building. Smoke triggered rate of rise alarm, fire department attended, installed large fans to remove smoke from building. [sic]*" Landlord's Legal Counsel submitted that there was no damage to the building, there just was excessive smoke.

The Landlord testified to a February 15, 2022 incident where Tenant2 walked into the building carrying a dog. This is a no pet building, and the Landlord stated Tenant2 knows this. He told Tenant2 that she is not allowed to have a dog in the building, and he said, "*she lost her cool*", she swore at the Landlord, and the elevator door closed.

The Landlord wrote Tenant1 about a March 17, 2022 incident in the Tenant's rental unit where the property manager was investigating a plugged toilet in the Tenant's suite. The Landlord claims Tenant1 blocked the property manager from leaving the rental unit, the incident was described in the letter as:

Confrontation:

After the toilet was unplugged, TS and [the Landlord] met in the sauna room to debrief. TS explained to me that when he came to [suite #] to investigate, he saw the plugged toilet and tried to leave the suite to call me. As he headed to the door, [Tenant1] pushed her way in front of him, and slammed the door shut blocking him from leaving. She was concerned that we were not trying to deal with the situation, which is not the case. As he was blocked into [Tenant1]'s suite, TS indicated he felt trapped. [Tenant1's friend] (Suite #) was a witness to the incident.

This behavior is unacceptable and will not be tolerated. Repeat events will lead to eviction.

On August 31, 2022, the Landlord wrote Tenant1 informing her about continual noise late at night coming from her suite and impacting the quiet enjoyment of the tenant below her. The Landlord uploaded this letter into documentary evidence, and following it is an undated and unsigned statement from TS about the noise disturbances. In the letter, the complaints are noted as "...opening and closing the heavy balcony door. The sound of the rolling door is intrusive and shakes the walls of my living room and bedrooms. It goes on all day." Additionally, TS states he is woken up by sounds the Tenant makes getting in and out of her bed, the closing of bathroom cabinets, and dropped or knocked over items on a hard surface. Legal Counsel also stated there is shouting late at night, but the letter does not include this.

On September 28, 2022, the current Property Manager was moving into the building. He testified that he came to the building and attempted to park where he was directed. His friend was trying to direct the Property Manager into a handicap/loading area parking spot. The Tenant came in behind them, and the Property Manager said she was yelling at them and he felt pressured that he could not park in the spot. Instead, the Property Manager parked across the way. The Property Manager stated her communication style

was so intimidating and aggressive, that he did not have confidence to go up to talk to her about the ongoing noise problems from her rental unit.

The Landlord uploaded documentary evidence dated November 8, 2022 from the current Property Manager regarding ongoing noises from the Tenants' rental unit. The current Property Manager testified that multiple times per week, there is a variety of different noises during the evenings. He stated the noises occur at any hour, 11 p.m., 2 a.m. or 5 a.m., and vary from heavy stepping with shoes on, drawers opening, sliding glass door opening and voices – talking, yelling, raised voices, and groaning. The Property Manager states these distracting, and loud noises affect his ability to have a good night's sleep. He testified that he first noticed the noises soon after he moved into the building, mainly the sliding door in the night and the bed was the most disturbing, but they are no longer the issue. The other noises have continued.

Tenant1's sister (Tenant2) was a previous occupant in the building, but her tenancy was terminated in April 2012. Tenant2 has been a frequent guest and is now living in the rental unit full time. The Landlord submits that Tenant1 has breached clause 13 of the tenancy agreement which states:

13. ADDITIONAL OCCUPANTS. *No person, other than those listed in paragraph 2 above, may occupy the rental unit. A person not listed in paragraph 2 above who resides in the rental unit for a period in excess of fourteen cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy after proper notice.*

The Landlord has not given approval that Tenant2 can be an additional occupant of the rental unit. Legal Counsel submitted that Tenant2 has sworn and been aggressive with property managers, has been the subject of complaints from other tenants in the building due to her smoking which was the subject of the previous hearing. Tenant1's tenancy agreement permits smoking on the balcony.

Tenant2 came over to help Tenant1 recoup from two hip replacement surgeries, the first in June 2016, and the second one in June 2018. Tenant1 says it takes six months to recover from a hip replacement surgery. Tenant1 said her balcony door was noisy, and she requested three times to get it fixed, and it finally got repaired in January 2023. Tenant1 said she bought a brand-new bed in January 2023. Tenant1 says they do not stomp around in the apartment, she has bad hips and Tenant2 is bone-on-bone with her arthritis, “... *we’re not making noises intentionally. We’re getting up, because I have IBS, you know, I have to go to the bathroom. You know, I’m 64, 66 this year, so you know, I have issues with my body. I think bedroom carpets would probably solve some of that noise problem.*”

Tenant1 said the carpets in her rental unit have been the same since she first moved in, and she commented they were not new then. She proposes that that is part of the problem with the noise in her suite. New carpets would most likely fix this.

The October 14, 2021 fire department attendance at the building determined there was no damage to the rental unit. Tenant1 said she sought records from the fire department about that date, and the *Freedom of Information and Protection of Privacy Act* request for access to Records 22-37 confirmed this.

Tenant1 testified that the property manager before the current property manager living in the rental unit below had been there for four years. She stated he never once brought to her attention that her sliding door, or her bed were a problem with noise coming from her suite.

Tenant1 said on the day the Property Manager was moving in, he brought a moving truck, and he attempted to park where he was designated. She did tell him that he cannot park there because he was in her spot. Tenant1 said there are three vacant parking spots where he could have parked. She said he was irate, he got mad at Tenant1, he jumped back into the truck and backed up. When he backed up, he scratched another tenant’s car. Tenant1 went upstairs to get the car’s owner outside to see the scratch on her car. He got upset about that. Tenant1 said she was not hostile or aggressive to the Property Manager.

Tenant1 uploaded a documentary submission that on October 23, 2022, Tenant1 told the new Property Manager that she expected a visit from a friend who had a dog. She asked for permission if her friend could bring their dog for the visit. The new Property

Manager granted permission. Tenant1 wrote about other tenants who were granted permission for short stays for guests with dogs.

Tenant1 says that the Landlord has his preferred tenants, and they all try to set Tenant2 off to get her angry just to get a response. Tenant1 said they have no responses about her in their records. Tenant1 says that the Landlord is trying to drum up issues, he went so far as to ask another tenant of which Tenant1 uploaded the email exchange. The Landlord asked the other tenant if he has “...witnessed [the Tenants] using foul language, or being disrespectful of other tenants? The only reason I ask is they have a RTB claim against us, and we need to make a decision to just accept the claim or counter the claim ...” The tenant replied that he had not heard the Tenants using foul language around them.

The Landlord is seeking an Order of Possession, and the Tenants are seeking to cancel the One Month Notice.

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.

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:*

...

- (c) *there are an unreasonable number of occupants in a rental unit;*
- (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,*

...

(iii) *put the landlord's property at significant risk;*

...

(f) *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

(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 sufficiently served with the One Month Notice on November 10, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenants applied to dispute the One Month Notice on November 18, 2022.

The rental unit is a two bedroom with den apartment. Tenant1 has had Tenant2, her sister, living with her after her hip replacement surgery. I do not find that two people

living in a two bedroom with den apartment can be considered an unreasonable number of people. I find the Landlord has not proven cause in this regard to end the tenancy.

The Landlord claims the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. The Landlord testified to Tenant2 walking into the apartment with a small dog in her arms, and he informed her that the building has a no pet policy, and she swore at him.

The Landlord also shared an incident where they described that Tenant1 blocked the property manager from leaving her rental unit when he went in her unit to fix a plugged toilet. The Landlord's letter stated that the property manager felt trapped. No witness came to give evidence about this event. I do not find that the Tenant assaulted the property manager, but rather she was anxious to have the toilet unplugged and wanted to be helped.

The Landlord wrote Tenant1 informing her of her late-night noises and that it is disturbing the quiet enjoyment of other occupants in the building. The current Property Manager testified that multiple times per week there is a variety of different noises from the upstairs Tenants. He ended his evidence by saying that the sliding door in the night and the bed was the most disturbing, but they are no longer an issue. He did say other noises have continued.

This same Property Manager had an incident when he was moving in in the parking lot of the residential property. He said Tenant1's communication style was so intimidating and aggressive, that he did not have the confidence to go up to talk to her about the noise problems. As a property manager, he will have to find a way to deal with all kinds of personality types.

Tenant1 testified she has received permission to have a dog in her rental unit for a short visit with a friend. Tenant1 stated that other tenants have been granted permission to have a dog visit their unit. Although this is a no pet building, the Tenants do not have a pet, but the building policy around dogs sounds to be flexible.

Tenant2's swearing at the Landlord is not kind or respectful, but as described is not a significant interference with or an unreasonable disturbance for the Landlord. Also, the Landlord trying to gather evidence from other tenants would not be helpful for his claim especially anything dated after the One Month Notice date which is November 10, 2022.

Tenant1 is an elderly woman with some serious health issues. She testified that her sliding door has been repaired and no longer contributes to the noise issue, she also purchased a new bed which has stopped the noise that was coming from her old bed. Tenant1 says the carpets in her rental unit are the same carpets as when she first moved in in 1997. The carpets were used then. It is reasonable that a certain amount of noise must be tolerated by occupants in apartment dwellings, and it seems probable that new carpets in the rental unit may contribute to lessening the noise issue from the Tenants' unit. As the property manager testified, since the repair to the sliding door, and Tenant1 getting a new bed, that noise is no longer an issue.

I do not find that the testimony and evidence of the Landlord has proven on a balance of probabilities that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. The Landlord has not proven cause to end the tenancy in this regard.

The Landlord claims the Tenants have put his property at significant risk, or that the Tenants have caused extraordinary damage to a rental unit or residential property. The Landlord testified that the Tenants left a pot of boiling water with cinnamon on the stovetop and left the building. Smoke caused the fire alarm to go off, and the fire department had to investigate the source of smoke. The fire department determined there was no damage, just an excessive amount of smoke. I find the Tenants have not put the Landlord's property at significant risk or have caused extraordinary damage to the rental unit. Accordingly, the Landlord has not proven cause to end the tenancy in this regard.

RTB Policy Guideline #8-Unconscionable and Material Terms states that a landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

...

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

It is not clear which is the relevant breach letter to the Tenants, either the letter dated January 10, 2022 or the April 26, 2022 letter. Neither of these letters specify what term of the tenancy agreement is breached. I find the Landlord has not proven that the Tenants have breached a material term of the tenancy agreement. Accordingly, the Landlord has not proven cause to end the tenancy in this regard.

The Landlord has not proven cause, on a balance of probabilities, to end the tenancy. The tenancy shall continue until it is ended in accordance with the Act.

The Tenant did not specify the Section of the Act, Regulation or tenancy agreement with which the Landlord must comply. I dismiss this part of the Tenants' application.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

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

The Tenants may withhold \$100.00 from one month's rent to recover their application filing fee.

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 15, 2023

Residential Tenancy Branch