



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNL, RP, PSF, LRE

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an Order cancelling a One Month Notice to End Tenancy for Cause dated December 2, 2022 ("One Month Notice");
- an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated November 1, 2022 ("Two Month Notice");
- an Order for repairs to the unit or property;
- an Order to provide services or facilities required by the tenancy agreement or law; and
- an Order suspending or restricting the Landlord's right to enter.

The Tenant, R.A., two agents for the Tenant, L.H. and S.M. ("Agents"), the Landlord, D.S., the co-Landlord, K.K., and the Landlord's apartment manager, B.W. ("Manager"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on their Application, the most urgent of which are the claims to set aside the One Month Notice and the Two Month Notice. I said I found that not all the claims on the Application were sufficiently related to be determined during this one-hour proceeding. I said I would, therefore, only consider the Tenants' request to set aside the One Month Notice and the Two Month Notice at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2012, and ran to November 1, 2013, and then operated on a month-to-month basis. They agreed that the current Landlord purchased the residential property at some time in the tenancy, and that the Tenants currently pay him a monthly rent of \$828.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$375.00, and no pet damage deposit. The Landlord confirmed that he still holds the security deposit for the Tenants.

The One Month Notice was signed and dated December 2, 2022, it has the rental unit

address, and it was served by being attached to the rental unit door on December 9, 2022. The One Month Notice has an effective vacancy date of January 1, 2023, which is automatically corrected by the Act to be January 31, 2023. The One Month Notice was served on the grounds that the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord also cited the ground that the Tenants or a person permitted on the property by the Tenants have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardize a lawful right or interest of another occupant or the Landlord.

In the hearing, the Landlord said he issued the One Month Notice for the following reasons:

It's for all of the uttering threats and arrests - and she actually went to court once, and they gave her a probation to be okay, to not do anything – gave her three months to be good - but two days later she did it again and was arrested, with a restraining order. She breached the restraining order twice, by threatening to slit the other tenant's throat with a knife. It was a very specific threat.

The Tenants' Agents said:

For this specific notice, we'd like to show that this is an accusation. The Landlord included information about a criminal charge. It is just a charge. This is a charge that came up from something that happened in July 2022. It was decided by the Crown in December that this charge needs to go to court. There is no evidence showing that the Applicant has done any of this and that it has been proven.

As of now, she has a charge, but it's only an accusation. Court is in June. They will dismiss it, if there is no breach of the contact order. [The Landlord] said there was a breach of conditions. She was arrested in January, but that was not approved to need a court date. No other court date was set. June 7 is the court date set. Nothing that she has done has been proven; it's all he said/she said.

The other Agent said:

As [the Agent] discussed, these are just allegations; nothing has been proven in court. We're of the mind that we will be successful in court in June. These allegations stem from a bigger problem. It's the third and fourth eviction notices he's put on the Applicant. They've all gone to dispute resolution, and it's been

proven that the allegations were false. We intend to do that again today.

She has lived there for 12 years. She's had no problem with court until [the Landlord] bought the building and started raising rents. He's been showing a pattern of harassment. None of these allegations have been proven.

The Landlord replied:

These aren't allegations; she's been arrested for them; and the Manager - she threatened to have her throat slit twice.

The Manager said:

On July 13, 2022, [the Tenant] was charged under section 264.1 (1) (a) for threats to cause death or bodily harm. She said she wanted to slit my throat open and kill me. she was released with conditions: to have no contact directly or indirectly, and she breached that on January 21st, and was arrested for a second time for the same thing - uttering threats to slit my throat open with a knife. The other charge was not uploaded into the court system, - they are backlogged - and takes a while to have these charges laid. They're in the process of the first charge and a second charge.

I don't think that - I should be able to water my plants outside without someone opening a door and threatening to slit my throat and kill me. I should also not have to install video cameras and live in fear because her behaviour is unpredictable. It's not getting better, it's getting worse. When I was outside in July - she said: 'I'm going to slit your throat open and kill you, bitch'.

[The Tenant] has come into my office. She's banned from the [local office], because of the harassment she's caused. She tried to get me fired from [the nearby town]. I'm a bylaw officer.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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; the Landlord has the burden of

proving his claim on a balance of probabilities.

In this case, the Landlord issued a One Month Notice, because he asserts that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord. And that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardize a lawful right or interest of another occupant or the Landlord.

The undisputed evidence is that the Tenant was charged with uttering threats to the Manager. It is also not disputed that the Tenant was arrested a second time for allegedly doing the same thing and that a restraining order was imposed on her. I appreciate that the Manager has flowers to water near the Tenant's unit; however, this does not release the Tenant from her obligation to avoid the Manager.

I agree that the Tenant has not been convicted of uttering threats in a criminal court, which has a standard of proof of beyond a reasonable doubt; however, the standard of proof in an administrative hearing is a balance of probabilities, which is a much lower threshold than that of the criminal court. I also find from the Parties' testimony that the Tenant and the Manager have history of contempt for each other; however, this is not a license to be abusive toward each other. Further, I do not need to find that the Tenant engaged in illegal activities; it is sufficient to find that it is more likely than not that she significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Based on the evidence before me overall, I find on a balance of probabilities that that the Landlord has met his burden of proof in this matter on a balance of probabilities. I find that it is more likely than not that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord. I also find that the One Month Notice complies with section 52 of the Act. Accordingly, **I dismiss the Tenant's Application** to cancel the One Month Notice and I find that the One Month Notice is valid and enforceable.

The Landlord is granted an Order of Possession pursuant to section 55 of the Act. As the effective vacancy date of the One Month Notice has passed, the **Order of Possession will be effective two days** after it is deemed served to the Tenant.

Given this conclusion, I find I do not need to consider the validity of the Two Month Notice. The Tenants' Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities. The One Month Notice is valid and enforceable. The Tenants' Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit, which Order is **effective two days after it is deemed served to the Tenants**.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 21, 2023

Residential Tenancy Branch