



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that their application made November 28, 2022 was made in error when they were attempting to reply to the Landlord’s application made for a hearing on December 1, 2023 under a different file number. The Tenants states that they attempted the cancellation of the application because of the error but that there was some confusion with the Residential Tenancy Branch (the “RTB”) information provided to the Tenants. The application was maintained thereafter to dispute the notice to end tenancy for cause dated and received December 5, 2022 (the “Notice”). The Landlord confirms that they served the Tenants with the Notice on December 5, 2022 as a result of the outcome of the hearing on December 1, 2022. Given the confusion and errors with their application and as there are no submissions that the Landlord is not prepared to deal with the Notice at this hearing, I find that the Tenant’s application may be considered as the dispute of the Notice.

The Tenant submits that they have not had sufficient time to respond to the Landlord's evidence provided recently to the Tenant. The Landlord states that their evidence was provided to the Tenant on March 7 and 27, 2023. The Landlord states that although this evidence is to support the reasons for the notice to end tenancy that was given to the Tenant in December 2022 they served it on these dates as it was before the latest period allowed under the Rules for their evidence to be provided. The Landlord states that a lot of the evidence was also the same as was provided to the Tenant for a hearing on December 1, 2022. This hearing resulted in a Decision dated December 2, 2022 (the "Decision"). The Landlord confirms that this evidence was present and available at the time the notice to end tenancy was given but that they needed more time to prepare the materials and to include evidence of incidents after the date the notice to end tenancy was given. The Landlord also wishes to call witnesses to support the reasons for the Notice. The Tenant states that the Landlord had all the witnesses attend the previous hearing and that there should not be any reason for them to attend and repeat the evidence.

Rule 3.11 of the RTB Rules of Procedure provides that evidence intended to be relied upon by a party must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of the evidence the arbitrator may refuse to consider this evidence. As the Landlord had the evidence to support the notice to end tenancy in early December 2022 and as there is no reasonable excuse for the delay of approximately 4 months in providing that evidence to the Tenant, I decline to consider the Landlord's documentary evidence. The Landlord remains entitled to provide oral testimony and evidence. As the Landlord unreasonably delayed the service of their evidence on the Tenant I consider that the Landlord is not now entitled to bring witness testimony to remedy this failure. The Landlord could have provided written statements from the Witnesses in accordance with the Rules. For these reasons I decline to hear from any of the Landlord's Witnesses.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Notice?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started in 2009. Rent of \$507.50 is payable on the first day of each month. No security deposit is being held by the Landlord. On December 5, 2022 the Landlord gave the Tenant the Notice. The Notice sets out that the Tenant or a person permitted on the property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord; or
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Notice sets out details including details in relation to an incident involving an injury to a horse.

The Tenant states that the Landlord has raised all the evidence for this hearing at the previous hearing on December 1, 2022 which was an expedited hearing to end the tenancy. The Tenant provides a copy of the Decision and argues that the Landlord may no longer pursue the end of the tenancy based on the same facts.

The Landlord states that the Tenant and her guest have repeatedly been yelling and screaming for between 1 to 3 hours a time between May 12 and November 30, 2022. The Landlord states that with the exception of the first two instances in May and June 2022 the noise occurred during the day. The noise for the first two instances occurred around 10:30 p.m. and the Landlord states that these late-night disturbances caused the tenants to lose sleep. The Landlord states that the noise has resulted in complaints from two other tenants in the building. The Landlord states that one of these tenants is seeing a psychologist but cannot say that the visits with the psychologist are related to

the noise of the Tenant. The Landlord states that the other tenants became fearful because of the violence of the guest's voice and words and changed their locks as a result. The Landlord is hesitant about when the locks were changed and believes they were changed in April or May 2022.

The Landlord states that on two occasions in August 2022 the Tenant yelled at another person who boards their horse at the property. The Landlord reads the text of the email sent to the Landlord that includes the statements "yelled at me and I just ignored it", "yelled at me and I said leave me alone and then the Tenant left", and "much less since the Tenant quit working there".

The Landlord states that on February 22, 2022 and on another occasion in March 2022 the Tenant's visitor was speeding on the long driveway almost hitting the dog. The Landlord states that sometime at the beginning of December 2022 the Tenant tried to cover one of the security cameras with a cloth and on the same day removed the cloth. The Landlord states that the Tenant is doing excessive loads of laundry at the property. The Landlord confirms that the tenancy agreement provides laundry services.

The Tenant states that it has been very stressful over the past year or so with the Landlord's repeated and unsuccessful attempts to end the tenancy, and that while there has been some arguments because of the stress the noise is not to the extent claimed by the Landlord. The Tenant states that they have taken to whispering in their bedroom to communicate. The Tenant does not believe that the arguments have caused anyone to be afraid. The Tenant states that they just work and come home and do not interact or disturb anybody. The Tenant states that the other tenants who changed their locks did so because of security issues related to a horse incident that was a subject of the previous hearing on December 1, 2022. The Tenant states that they have never yelled at the boarder and have not had any confrontations with this person. The Tenant states that since August 2021 the Tenant has faced constant intimidation and vicious

persecution by the Landlord resulting in the Tenant not being able to have friends or family visit at the unit. The Tenant states that it has been a very stressful time.

Analysis

The Decision sets out several incidents submitted by the Landlord as substantiating an early end to the tenancy for cause. A review of these incidents indicate that the Landlord is using the same incidents to substantiate the Notice at this hearing. The Decision sets out the following:

Here, the only incident that would meet the two-part test in section 56 of the Act is the incident with the horse. However, there is not sufficient evidence before me, nor was there sufficient evidence before the police, to determine that it was the Tenant or someone connected to the Tenant who stabbed the horse. I am not satisfied based on the evidence provided that it was the Tenant or someone connected to the Tenant who stabbed the horse. Given this, I decline to end this tenancy based on this incident.

None of the remaining incidents alleged are serious enough to warrant ending a tenancy pursuant to section 56 of the Act. The Landlords can seek to end this tenancy pursuant to a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the Act in relation to these incidents.

Briefly stated the legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. As the dispute in relation to the horse injury incident as noted in the Notice has already been determined in a previous decision, I find that res judicata applies and the Landlord may not seek an end to the tenancy based on the matter of the horse injury. As the Decision specifically does not make a determination on the remaining incidents I find that these incidents may be considered for this dispute.

Section 47(1)(d)(i) and (ii) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by 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 bears the burden of proof that the Notice is valid for its reasons. I consider the incident of alleged speeding to be too remote in time to be considered as evidence of any interference, disturbance or jeopardy. There is only evidence of two occasions of loud noises twice late at night in May and June 2022. The remaining evidence of noise incidents is that they occurred during the day and there is no evidence to support that these daytime occurrences or the two night-time occurrences caused any significant or unreasonable amount of disturbance or interference to anyone. There is nothing to support that other tenants changed their locks in response to the Tenant's behavior as opposed to the incident involving the horse and this evidence of the Tenant sounds more believable. A one time and brief incident of covering a security camera is not evidence of serious jeopardy to the Landlord's lawful rights or interest in relation to security. There is no evidence to support that the completion of any amount of laundry has jeopardized any interest of the Landlord or disturbed or interfered with any other occupant. Given these reasons and considering the Tenant's evidence I find on a balance of probabilities that the Landlord has not substantiated that the Notice is valid for its reasons. The Notice is therefore cancelled, and the tenancy continues.

As the Tenant has been successful with their claim to cancel the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled and the tenancy continues.

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

Dated: April 05, 2023

Residential Tenancy Branch