



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RP, RR, LRE, LAT, OLC, FFT

Introduction

On December 4, 2022, the Tenant submitted an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause dated November 25, 2022, (“the One Month Notice”). The Tenant also applied for the following relief:

- for repairs of the rental unit
- for a rent reduction
- to restrict the Landlord’s right of entry
- for authorization to change the locks
- for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The Landlord was assisted by a consultant/ agent. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that service of the One Month Notice is what prompted the Tenant to apply for dispute resolution. The Tenant was at liberty to apply for dispute resolution to resolve his other disputes; but did not do so until he received the One Month Notice.

I informed the Tenant that only the dispute of the One Month Notice would proceed, and the other claims would be dismissed with leave to reapply. The Tenant voiced disagreement with my decision as he wanted every issue to be heard. The Tenant has provided over 800 pages of documentary evidence and 111 video files in relation to his disputes. To hear all the issues in the application would result in a very lengthy hearing and would require an adjournment to a later date as there was no opportunity to continue this hearing beyond the scheduled one hour. The Landlord has already waited four months for this hearing and an adjournment to hear all the matters would result in more delay.

I find that the most important matter to determine is whether or not the Landlord has sufficient cause to end the tenancy based on the One Month Notice. The remainder of the Tenant's claims are dismissed with leave to reapply.

The Tenant asked to amend his application to include the legal name of the Landlord. The application is amended accordingly.

Issues to be Decided.

- Does the Landlord have sufficient reason to end the tenancy, and is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on April 1, 2018, as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$1,588.00 is due to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The Landlord served the One Month Notice to the Tenant by posting the One Month Notice on the Tenant's door on November 25, 2022. The One Month Notice cites the following reasons for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the details of cause, the Landlord writes:

Tenant for the past two years has been harassing our on site staff they are all scared of him and dont want to deal with this tenant anymore. Few of our contractors also refusing to work in his suite because of his harassment by calling police on them accusing that they are stealing from him recording them with his phone. Tenant has been smoking on the property he has been warned many times to correct this behavior but continued to smoke and jeopardize the health of the surrounding tenants by secondhand smoke. All of this warning and breach letters are carefully saved in our files for proof we would gladly supply all the evidence to the court if necessary.

The Landlord provided a copy of the One Month Notice within 69 pages of documentary evidence in support of ending the tenancy.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that he received the One Month Notice and disputed the Notice on December 4, 2023, within the required time period.

The Landlord provided testimony on why the tenancy needs to end. The Landlord stated that they have received eight complaints from residents and the building manager about the Tenant. The Landlord received 13 letters related to the Tenant smoking and harassment of staff. The Landlord stated that the Tenant was verbally abusive to the building manager in the presence of her young daughter.

The Landlord stated that there was a previous hearing involving the parties where the Arbitrator cautioned the Tenant not to interfere with the Landlord. The Landlord stated

that subsequently, the Tenant interfered with a contractor by following him and recording his movements and by asking questions about the ethnicity of the contractor's wife. The Landlord stated that the contractor will no longer work at the property. The Landlord referenced his documentary evidence of notarized statements regarding the complaints. The Landlord made specific reference to documents identified as L19, L20, L26, L28, L29, L30, L31, L33, L35, and L36.

The Landlord stated that when contractors are in his unit he accuses them of stealing, takes videos of them, and when asked to move aside he continues to come back.

The Landlord stated that the Tenant is constantly yelling and abusing the building manager T.C..

T.C. provided testimony that the Tenant has harassed her on many occasions by yelling at her and accusing her of not doing her job. T.C. stated that she is scared to work on the third floor.

The Landlord stated that they have no issue with any other occupants except the Tenant. The Landlord stated that he ignores warnings about smoking and harassment.

The Landlord wants to end the tenancy and requests an order of possession for the rental unit.

In reply, the Tenant stated that he takes video recordings because the Landlord is not afraid to make false statements about him and evict him without reason. The Tenant stated that all the Landlord's evidence is completely false.

The Tenant stated that he is a person with a disability. He states that he has depression and a personality disorder, and he sometimes loses control. The Tenant referred to his documentary evidence of his medical conditions which includes

- an approved designation as a person with a disability dated July 28, 2022.
- a doctor's letter dated October 2020 that he has mixed personality disorder and anxiety.
- a medical document that he has occasional impulse aggressive outbursts across various settings.

The Tenant stated that he has been harassed by other occupants; the landlord; and by contractors. Within the Tenant's documentary evidence he states that he collaborates with staff and contractors and respects property manager requests.

The Tenant stated that he denies harassing the Landlord's staff. He stated that the Landlord refuses to comply with repairs to the unit and when he complains, he starts to receive breach letters from the Landlord.

The Tenant referred to a five-page document in his evidence named false breach notices. The document references that he was granted permission by the Landlord to smoke on his balcony and that he was reporting issues with problematic occupants smoking in the building to the Landlord. The document references numerous video recordings provided by the Tenant where he feels harassed by the Landlord. The Tenant submits that all the records he provided prove that he has not interfered with contractors or the property manager.

In providing his response, the Tenant was going through each of his documents one by one. I asked the Tenant to summarize his evidence as I was mindful of the time. The Tenant stated that the Landlord had a long opportunity to testify and that she should be permitted the same opportunity. I informed the Tenant that he has already used more time than the Landlord. I cautioned that Tenant that I did not want the Tenant to unnecessarily spend time on each document so that the hearing would have to be adjourned.

In accordance with the Rules of Procedure, I asked the Landlord if they would agree with an adjournment. The Landlord replied that they are not in agreement because the Tenant will retaliate against the staff and witnesses and there have been incidents by the Tenant after he received the One Month Notice. The Landlord is concerned the incidents will continue.

I asked the Tenant how much more time he would need to provide his response. The Tenant replied that he cannot say. The Tenant provided 800 documents and could not say how much time he would need.

While an RTB hearing is a summary proceeding that is scheduled for one hour, this should not take precedence over a person's right to participate and respond. I find that the Tenant had four months to prepare for the hearing and had received a copy of the Landlord's evidence for 13 days prior to the hearing. The Tenant had already been provided with 40 minutes to respond. In my view, the Tenant was given a reasonable opportunity to respond. The Tenant could have provided a document summarizing his response and position on the issues. I find it is not reasonable to adjourn the matter to one or more hearings to permit the Tenant to go through his documents one by one.

I informed the parties that the hearing will not be adjourned, and the Tenant was given five minutes to finish his submissions.

The Tenant stated that the Landlord's evidence does not contain specific dates or names. He stated that the Landlord's letter about smoking does not specify the date or who wrote it. He stated that he never harassed other occupants from the balcony.

The Landlord stated that they all their evidence is notarized in support of ending the tenancy.

The Landlord has provided documentary evidence of letters sent to the Tenant in response to the Tenant's request for repairs to flooring and outlining the next steps, stating the Landlord is willing to do the necessary repairs. The Landlord's letter dated July 22, 2021, states that the Landlord is in agreement to complete repairs. The letter asks the Tenant to stay out of the contractor's way, and that the Tenant accused the contractor of stealing your wallet and called the police. The contractor had to wait for police, and you then apologized as you remembered that you had left your wallet at a store. The contractors decided to not return to the Tenant's unit.

The Landlord's letter of August 9, 2021, indicates that contractors have attended the rental unit to complete repairs to a window and bathroom and that the Tenant interfered. The Letter asks the Tenant to stop interfering with the contractors. The letter requests that the Tenant vacate the unit once the contractors arrive as they are unwilling to complete work while the Tenant is in the unit.

The Landlord sent the Tenant a letter dated November 17, 2022, reminding the Tenant that this tenancy agreement states no smoking in the rental unit and residential property. The letter states that the Tenant was given numerous breach letters and oral warnings but continues to smoke. The letter asks the Tenant to not smoke in the unit or balcony and that the activity must stop immediately by November 23, 2022. Any further breach will result in a One Month Notice to vacate.

The November 17 letter also points out another breach regarding conduct and of an RTB decision from October 17, 2022. The Tenant was cautioned to not interfere with replacement work so that tradespeople can go about their business undisturbed. The Letter indicates that on November 14, 2022, the Tenant began an argument with a ServiceMaster technician performing remediation. The Landlord cautioned the Tenant that any further complaints will result in a One Month Notice to vacate.

The Landlord provided a copy of an email they received back in November 2021 where the painter is respectfully declining to do the work or have any of his staff work in the Tenant's unit.

The Landlord provided a copy of a letter they received March 20, 2023, regarding repairs to the Tenants unit on November 12, 2023. The letter states that

The Landlord gave the Tenant a letter dated November 25, 2022, explaining why they are serving him with the One Month Notice. The letter states that after months of accusations, frustration and aggravation stated by the Tenant there are too many irreconcilable differences, and the Tenant is given the One Month Notice for cause and a breach of a material term.

The Landlord gave the Tenant a letter dated December 13, 2022, stating that he was observed smoking on his balcony on November 30, 2022.

The Landlord gave the Tenant a letter dated December 20, 2022, regarding a harassment incident that happened on December 19, 2022, around 6pm. The letter indicates that the Tenant came down to the second floor and started yelling at T.C.'s daughter. The letter indicates the Tenant continued to harass them with yelling and screaming and recording them with your phone. The letter indicates that the Landlord reported the incident to Police who attended and gave you a warning.

The Landlord provided a letter from May 2021 and September 2021 they received from an occupant of the building named D.T. who states that a tenant upstairs who screamed at him and spat on him and has been aggressive and harassing him.

The Landlord provided a letter dated August 23, 2022, received from the occupant of unit #212. The letter states that the Tenant in unit #312 is very rude and yells at them.

The Landlord provided a letter dated March 21, 2023, received from the occupant of unit #309. The letter states that he heard a man yelling and went into the hallway and observed the Tenant from #312 being verbally aggressive and recording Dejan and his daughter.

The Landlord provided a letter dated March 24, 2023, received from the occupant of unit #114. The letter is in regard to an incident in the laundry room that occurred back in

February 2021. The letter provides that the Tenant from #312 acted aggressively and was very intimidating.

The Landlord provided a letter dated March 27, 2023, received from the occupant of unit #213. The letter states that the Tenant in #312 acts aggressively and is provoking him with complaints and pictures to get an inappropriate response.

The hearing concluded at 12:22 pm.

Analysis

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

In the matter before me, the Landlord has the onus to prove that there are sufficient reasons to end the tenancy.

I do not accept the Tenant's statement that the Landlord refuses to comply with repairs to the rental unit. I find that the Landlord has responded to the Tenants requests for repairs by agreeing to make the repairs and by sending tradespersons to the unit. I find that the Tenant is often unsatisfied with the repairs made to his unit.

I do not accept the Tenant's statement that all the Landlords' evidence is completely false. I find that the Landlord has provided substantial documentation regarding the concerns the Landlord has with the Tenant's behaviour. The Landlords' evidence contains dates and names. The Tenant's own evidence is that he has depression and a personality disorder, and he sometimes loses control. I find the Landlords' evidence to be reliable and credible.

In the documentary evidence the Tenant states that the property manager is not afraid to falsify his email dated June 20,2021. The Tenant provided a copy of the his email and copy the Landlord provided that he states was faked. Upon review of the two emails they appear to me to be identical.

With regard to smoking, I have reviewed the tenancy agreement which provides a written clause that no smoking is permitted in the rental unit and residential property. While the Landlord may have been lenient with enforcing this term of the agreement, I find that the Landlord notified the Tenant in writing on November 17, 2022, that he is to stop smoking immediately by November 23, 2022. I find that the Landlord made it clear to the Tenant that they were enforcing the no smoking term of the tenancy agreement.

The Tenant was observed smoking on his balcony on November 30, 2022. The Landlord has an obligation to protect the quiet peaceful enjoyment of all occupants, and this includes protection from secondhand smoke.

I also accept the Landlords' testimony that the Tenant is aggressive and yells at the Landlord's staff. I accept the Landlords' evidence that the Tenant's behaviour of interfering and yelling has unreasonably disturbed the Landlord and that the Tenant has also breached a material term of the tenancy agreement by continuing to smoke on his balcony.

I find that the Landlord has provided sufficient evidence to justify ending this tenancy.

The Tenants application to cancel the One Month Notice is not successful and is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is granted an order of possession effective no later than 1:00 pm on April 30, 2023, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the One Month Notice is not successful. The tenancy is ending.

The Landlord is granted an order of possession for the rental unit effective no later than 1:00 pm on April 30, 2023, after service on the Tenant. This order 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 *Residential Tenancy Act*.

Dated: April 24, 2023