



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This dispute relates to a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel a 1 Month Notice to End Tenancy for Cause dated November 22, 2022 (1 Month Notice).

The filing fee was waived for this dispute.

The parties and a witness attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. A witness was also called and affirmed. Their testimony will be described further below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

There were no service issues that had to be addressed.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The tenant was served with the 1 Month Notice in person on November 24, 2022 and filed to dispute the 1 Month Notice on December 5, 2022, which is within the 10-day timeline under section 47 of the Act as the 10th day fell on Sunday December 4, 2022 and the *Interpretation Act* allows until the next business day, Monday December 5, 2022

to file their application. The effective vacancy date is listed as December 31, 2022. The tenant continues to occupy the rental unit.

In the 1 Month Notice, the landlord has alleged 3 causes, as follows:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)	
<input checked="" type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk

The Details of Dispute portion of the 1 Month Notice reads as follows:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Ongoing constant fighting and damage to the property cause by boyfriend of tenant who tenant has permitted on the property and has been living in the unit on and off without authorization. Tenant has been warned and given written notice of disturbances that are effecting the residents around her with constant police pressence and all night violent fights and arguing. Tenant has not complied with previous requests. 2 recent events required RCMP attendance November 21st and November 23 1230am police attended and broke down the door.

The agent affirmed that the most recent incidents on November 21, 2022 and November 23, 2022 required the 1 Month Notice to be issued. The agent referred to two emails, one dated November 21, 2022 that was not submitted in evidence and was accidentally mislabelled, and contained a December 15, 2022 email instead, which is a date after the 1 Month Notice was issued. The other email was dated November 23, 2022, which indicates in part the following, which has been anonymized to protect privacy:

“Another huge fight 12 30 am woken cops here with flashlights banging she would not open so cops just kicked door open (unit address) D had already taken off up Shelbourne in silver car. Cop asked me who manager was I said P. They said they are tired of dealing with this for years that they need to stay apart. They thought she needed an ambulance for her to get mad at them for forced entry.”

The tenant denied that their boyfriend was there and that there was no fighting. The tenant stated that the noise was their child crying only. The tenant also claims that the police broke through their door because they heard the child crying and had to do a

welfare check and that the tenant was upset with the police for doing so. The tenant stated that all complaints come from TW (neighbour) who has bragged about being able to get anyone evicted that they so chose.

The tenant called their witness, the mother of the tenant, JW, who testified as follows:

- They lived 2 doors down from TW for 7 to 8 years,
- TW bragged to them that they could get other tenants evicted,
- TW would always be smoking weed outside and would intrude in their personal space,
- It was hard living next to TW as they had 7 other tenants kicked out and would actively try to get others evicted if TW did not like them,
- TW complained about their cat,
- TW was reported due to their child smoking crack.
- They left the rental unit as they found a different placed to rent and denied being evicted.

The agent had no questions for the witness and as a result, the witness was excused.

The tenant also stated that they were pregnant in November and did not have any parties as a result.

The agent submitted 3 letters of complaint against the tenant dated in October 2022, November 2022 and December 2022. All of the complaints were from TW, except for one complaint from another tenant, which was not submitted in evidence for my consideration.

The agent confirmed that they have not called the police regarding any complaints about the tenant.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

As indicated above, I find the tenant applied on time to dispute the 1 Month Notice. Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. At the very least, I would have expected the landlord to have submitted the November 21, 2022 email, which they failed to do and instead,

mislabelled it with an email from December 2022. In addition, I find that based on the witness testimony that there is sufficient evidence to support that most of the complaints came from TW, who has bragged about being able to get other tenants evicted. As a result, I afford little weight to the emails from TW.

In addition, I consider the fact that the agent has not contact the police directly to support that there has been no need to call the police regarding noise or complaints about this tenant. At the very least, I would have expected the landlord to follow up with the police to determine if there were any criminal charges or active police investigations regarding the tenant. The agent provided no such evidence.

Given the above, I find this matter is simply a landlord said versus tenant said situation, and that the evidence from TW is of little weight and that the landlord has failed to reach the burden of proof as a result. As such, I cancel the 1 Month Notice as I find the landlord has failed to provide sufficient evidence to support that it is valid. **I ORDER** the tenancy to continue until ended in accordance with the Act.

Conclusion

The tenant's application is successful. The 1 Month Notice issued by the landlord dated November 22, 2022 is cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the Act. The decision will be emailed to both parties as confirmed during the hearing.

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: April 17, 2023

Residential Tenancy Branch