



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, MNDCT, PSF, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a One Month Notice to End Tenancy for Cause;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by a Legal Advocate. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing I advised the parties that the Rules of Procedure specify that multiple applications made in a single application must be related, and the primary application is to cancel a notice to end the tenancy for cause. The tenant agreed that all other applications be dismissed with leave to reapply, and the hearing focused on the One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issue remaining to be decided is: has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 1, 2022 and reverts to a month-to-month tenancy after July 31, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$1,650.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a 4-storey apartment building. The landlord's agent does not reside on the rental property. A copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord's agent further testified that on May 26, 2023 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by attaching a copy to the door or other conspicuous place where the person resides, with a witness. A copy of the Notice has been provided for this hearing, and it is dated May 26, 2023 and contains an effective date of vacancy of June 30, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The resident in the suite above complained of negative experiences with the tenant banging on the ceiling and on the resident's door. The resident in the upper level gave notice to end that tenancy effective February 28, 2023 and provided emails about experiences, copies of which have been provided for this hearing.

The first interaction was when the resident in the upper unit was not home and found a note left by the tenant. A copy has been provided for this hearing, and it states: "If you are man enough to make noise at night, then you are man enough to answer the door when I knock." The tenant's name and suite number are on the note, with a P.S.: "Let me know if I am too loud ever." The landlord testified that video has been provided for

this hearing with audio, during which the tenant says, “Do we have a problem here; do you have a 500 pound fucking elephant?” During the interaction the tenant accuses the other resident of disturbances. The letter from the other resident also states that banging picked up again, and that the tenant has been rude, aggressive, immature, and completely unprofessional when dealing with problems within the building, and the resident has felt anxious to walk around the apartment regardless of the time due to a perceived lack of privacy and that an angry man could show up ready to yell at the resident. The resident gave notice to end that tenancy at the end of January, effective at the end of February, 2023. To avoid any confrontation, the landlord waited until that resident departed before giving a letter to the tenant.

On January 16, 2023 another note was received from the tenant, which was posted by the tenant on all of their suite doors, which specifies apartments 105, 205, 405, 104, 204, 304 and 404 and states: “Someone is smoking inside their apartment and disgusting smoke is getting into my apartment. Aside from the risk of burning the building down, when you get evicted you will not be able to afford rent anywhere (in the District). Also, 405, can you not walk around at 3am above my head? Try getting a job or going to school etc. which requires a person to sleep.” It’s identified with the tenant’s first name and apartment number.

The email of the resident from the upper level goes on to say that the tenant bangs on the ceiling if the resident rolls over in bed or walks too loudly, which picked up and the resident started recording.

A letter from the landlord to the tenant dated March 13, 2023 has also been provided for this hearing, which advises that the tenant is in violation of the lease and the Residential Tenancy Act, by leaving rude and threatening notes to neighbours and banging on the ceiling. It also references term 7 of the tenancy agreement respecting conduct. The tenant responded in writing the same day making it very clear that other residents disturb the tenant intentionally. It does not indicate a date by which the tenant must comply because there is no date; it must be permanent.

On March 27, 2023 a reminder was given to all tenants about conduct. It states, in part that the rental building is wood framed so there is inevitably going to be some noise transfer, and asks the tenants to be mindful of noises.

During the month of April, 2023 the landlord received other complaints from other residents about the tenant’s behaviour, which is disturbing. Copies have been provided for this hearing, one of which requests that the landlord take “serious concern.”

The landlord has also provided a copy of a letter from the tenant addressed to the landlord, and a copy was given to the new resident in the upper unit. It states that there are noises at night while sleeping, and the landlord testified that the tenants in that unit were not concerned, but amused. The letter from the tenant mentions pedophiles several times.

An Incident Report written by the building manager dated May 18, 2023 has also been provided, which states that the tenant complained of the resident in the unit above who was banging up and down on the floor of the apartment at 8:15 pm. on May 17, 2023, and that the tenant believed that someone had a drone outside his apartment looking into his suite. It also states that the residents in the upper unit had notified the landlord that the tenant bothered them all hours of the night and tried to open their door, as with other apartments.

The tenant sent an email to the landlord on May 20, 2023 which states, in part: "Is there anyway you can evict this pedophile idiot because (the City) seems to have an infestation of these shitrats from shirat families," referring to the resident in the suite above.

Several other letters and complaints have been provided for this hearing, one of which indicates that someone tried to enter the resident's apartment, who went to another unit for safety, and it states that, "Either he stays in this building or we do." That resident advised the landlord toward the end of May that they are actively looking for another place to live, and they moved to another unit at the end of May.

The landlord offered the tenant a Mutual Agreement to End Tenancy with no penalties, but the tenant said he would leave for \$100,000.00.

Two tenants have vacated their rental unit above the tenant's, and the landlord is keeping it vacant to prevent other issues.

The tenant testified that he received the landlord's March 13, 2023 letter, and wrote to the landlord about people above his head. That was about 9 months into the tenancy, but the landlord ignored the tenant entirely on many issues. The landlord asked the tenant to not talk to anyone except the landlord, and the tenant complied. Letters from other tenants are non-factual; there is no truth to them. The tenant has never tried to enter other apartments, but someone has entered the tenant's apartment, and the tenant put in a security system.

Pedophiles were mentioned in the tenant's correspondence because the tenant was "pissed off." There is smoke pouring out of the tenant's electrical socket and into the apartment, and the building manager did nothing about it.

The landlord did not offer the suite above or try to facilitate the problem that the tenant has with people above. The tenant doesn't make any noise.

Opening doors is the crux of the landlord's claim, but the tenant has not done that and never would.

Since March 13 the tenant has not engaged with anyone, just sent letters to the landlord. The tenant has previously left rude notes, but no threats. The tenant admits to banging on the ceiling until he was asked to stop, but that only happened once or twice.

The tenant has also provided a photograph of his apartment door with broken eggs on the floor in front of it. Also provided is a photograph of a dead mouse, a dirty knife and a note that the tenant testified were left outside his apartment door. The note says: "A country which destroys good fathers and their children is no country of mine," with the tenant's name on it.

SUBMISSIONS OF THE LANDLORD:

None

SUBMISSIONS OF THE TENANT'S ADVOCATE:

None of the complaints have any names or addresses, but 2 people moved out, but they are not called to speak to that. The landlord had admitted in the notice to all tenants that the construction of the rental complex requires tenants to reduce noise, and this tenant should not be penalized for the landlord's failure to provide sound-proofing. Other tenants have instigated conflicts against the tenant.

With respect to breach of material term, the landlord has not specified what is the material term. The tenant testified that it has been 4 months since the March 13, 2023 letter and the tenant has complied. The tenant has demonstrated a commitment to change behaviour. The tenant has corrected any breach within a reasonable time.

SUBMISSIONS OF THE TENANT:

If the landlord was truly interested in resolving the situation, they would have offered the tenant to move to the upper level suite twice, then there would be no one above the tenant. Places have been broken into and the tenant in suite 304 has mental problem. Insulation

between suites is lacking, as well as mice in the building, coffee stains on the ceiling and mold on windows. The landlord's agent accuses the tenant of trying to enter other suites, which is not true. The tenant has asked for sound proofing and security cameras. The things that are scaring people are not caused by the tenant.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to the first reason for issuing it: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, there is no question in my mind that the tenant has unreasonably disturbed other occupants with rude, accusatory and defamatory statements and notes.

The landlord gave the tenant a letter, reminding the tenant of term 7 in the tenancy agreement, on March 13, 2023, and the tenant testified that he has complied, and has only corresponded with the landlord's agents since. The correspondence to the landlord also contains rude and accusatory statements. There is evidence of the tenant being extremely rude and disrespectful to the landlord's agent, in writing. but there is no evidence that the landlord has been disturbed. However, if the tenant had issues with the tenancy, the tenant had alternatives to writing such disturbing notes and letters.

I have reviewed all of the evidence, including the audio. The landlord's letter to the tenant dated March 13, 2023 asks the tenant to avoid confronting neighbours about noise issues directly, but to submit a written report for the landlord to follow-up. It also indicates that if the inappropriate behaviour continues, the landlord will issue a one month notice to end tenancy. I find that the letter constitutes the requirements of ending a tenancy for breach of a material term of the tenancy agreement. However, the tenant testified that after receiving the letter, the tenant complied. The evidence from the landlord that contradicts that are 2 letters dated May 5 and May 14, 2023 from other residents, both of which complain to the landlord that the tenant has continued to complain to the residents about noises. The May 14, 2023 letter of complaint indicates that the tenant gave the resident a copy of a letter that the tenant provided to the landlord, with additional writing on it that states: "FYI: This will end up in court," which

the resident found to be a threat. The landlord's letter dated May 26, 2023, which accompanied the Notice states that the landlord had received continued complaints and reports about the tenant disturbing and confronting neighbours and displaying inappropriate behaviour towards them.

Therefore, I find that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed other occupants, and I dismiss the tenant's application seeking an order cancelling the Notice.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant.

Since the tenancy is ending I dismiss the tenant's applications for an order that the landlord provide services or facilities required by the tenancy agreement or the law; and for an order limiting or setting conditions on the landlord's right to enter the rental unit, without leave to reapply.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

The balance of the tenant's application is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a One Month Notice to End Tenancy for Cause is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

The tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed without leave to reapply.

The tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed without leave to reapply.

The tenant's application for recovery of the filing fee is hereby dismissed without leave to reapply.

The balance of the tenant's application is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: July 18, 2023

Residential Tenancy Branch