



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding MAINSTREET EQUITY CORP and
[tenant name suppressed to protect privacy]

DECISION

Introduction

This telephone conference call hearing was convened on December 15, 2023, as a result of the tenant's two applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenant first applied on August 29, 2023, for an order cancelling a One Month Notice to End Tenancy for Cause (August Notice) dated August 25, 2023, issued by the landlord on August 25, 2023, and recovery of the cost of the filing fee.

The tenant then filed a subsequent application for dispute resolution for an order cancelling another One Month Notice, dated October 31, 2023 (October Notice) and recovery of the filing fee.

The files were administratively joined by the Residential Tenancy Branch (RTB) as repeated applications, set for the same time and date.

The hearing continued for 63 minutes, and the hearing was adjourned. An Interim Decision was made December 15, 2023. The Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant, their agent, two witnesses, the landlord's representatives and the landlord's witness attended. The witnesses were excused until their testimony was required.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed. During the hearing, the parties were reminded about the conduct of the hearing and were reminded to not interrupt the hearing.

The landlord confirmed receiving the tenant's first application, but not the second. The tenant provided a proof of service showing the 2nd application was served to the landlord by registered mail on November 8, 2023. I reviewed the Canada Post website using the tracking number provided by the tenant, which showed that the landlord failed to collect the mail, despite being given notice cards.

I find the landlord was sufficiently served the tenant's 2nd application as required under section 89(1) of the Act on August 13, 2023, 5 days after the application was mailed, as I find the landlord's failure to collect the registered mail does not override the deemed service provisions of the Act. I note that all of the landlord's evidence was filed in the first application.

Both parties confirmed receipt of the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

In this case, the landlord served the tenant two 1 Month Notices. On the October Notice served to the tenant, the landlord wrote that the Notice amended the 1st Notice (August Notice) served. The parties agreed that the 2nd Notice replaced the 1st Notice. As a result, I cancel the 1 Month Notice of August 25, 2023, and it is no force or effect.

The hearing proceeded on the merits of the October Notice dated October 31, 2023.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

This tenancy began on or about August 1, 2019, for a monthly rent of \$760. Filed in evidence was the written tenancy agreement.

Filed in evidence was the Notice. The Notice was dated October 31, 2023, for an effective move-out date of November 30, 2023. The tenant confirmed receipt of the Notice on October 31, 2023.

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The reasons listed on the Notice to end tenancy were:

1. Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

In the Details of Causes section of the Notice, the landlord wrote the following:

On July 28th 2023 I had a complaint from minor that is 13 year old female she lives in unit [redacted] with her grandma [redacted] That [redacted] apt [redacted] called the minor a bitch and other harsh words. Closed the door so she could not enter the building. The minor came to me with her older brother to say she was afraid of her and if she could leave her alone. I called [redacted] of unit [redacted] and told her that was uncalled for and everyone has the right to feel safe where they live. [redacted] later text me to apologize and that she and [redacted] quote (I totally agree and I'm very disappointed in my behavior) [redacted] also threatened to kill my dog [redacted] the Resident manager of this building. She said she wanted to stab my puppy in the eye after I walked out of the side door of the building. I own a 7 pound min pin puppy. She said it in front of the tenants that were standing outside with her. One of the tenants came and told me this after the fact and I have a sworn statement from this witness. I went to the police station to make a complaint, file 2023-[redacted] I will attach it. My puppy also got mysteriously sick a few weeks before this and was severely sick. Someone had mentioned to me that [redacted] might be leaving chocolate on my floor for dogs to eat. The minor she swore at lives on my floor and also owns two little dogs. This has caused other tenants to complain that they do not feel safe walking around the building with there dogs. Chocolate is very bad for dogs and can kill them. I also told the police about her threatening a minor. I do not feel safe living with this tenant in our building, I have the right to live here peacefully and not feel threatened that my puppy will be harmed. Other tenants also have the right to live here and not feel as they can not walk there dogs in fear of being poisoned.

[Reproduced as written except for removing personal information]

In support of the Notice, the landlord's agent (BL) testified to the following:

The tenant threatened to kill their dog, a small min pin puppy, by stabbing the dog in the eye. When asked, BL said they did not hear the tenant say this, but it was reported to them by another resident. BL also said they never asked the tenant about this allegation. They made a police report about the alleged threat and other residents reported the matter. Filed in evidence were police documents.

BL also testified that they believed the tenant caused their puppy to become violently ill by leaving chocolates about the property. BL said they have not seen the tenant leave chocolates or their dog consume the chocolates, but that they heard rumours about the property. Other than a few small pieces of candy after Halloween, BL has not seen chocolates on the property. BL now feels like they cannot walk their dog anymore.

BL testified that another reason for seeking to end the tenancy was due to an altercation the tenant had with a 13 year old who resides on the property with their grandmother. This was reported to BL when the teenager told them that the tenant called them a "bitch". BL said that they get that teenagers can be rude, but they have the right to live at the residential property. BL testified that the tenant did apologize for their behaviour as proof the incident did happen.

Landlord KS testified to the following:

The tenant is not capable of controlling their anger and the evidence shows the time and dates where the tenant has been aggressive, including banging on the manager's door.

The tenant took unauthorized photos of DL, another resident in the building.

In summary, the tenant is being evicted for interfering in the landlord's business and making it difficult for BL to do their job. The threat to BL's dog ended up with the eviction notice.

The landlord's relevant evidence included documents from the local police department, text message communication with the tenant, and photos.

Landlord's witness -

In response to questions asked by the landlord, DL testified to the following:

They heard the tenant say they wanted to stab BL's dog in the eye with a fork, that they felt threatened and harassed by the tenant.

Additionally, evidence taken was that many of the tenants gather in the smoking area outside the apartment building, where they socialize, smoke and sometimes drink alcohol. Both parties made reference to encounters in this area.

The tenant testified to the following in response:

That in general, they usually just put up with the teenager's yelling at them, but one day, they did yell at the teenager. The tenant recognized they should not have yelled at the teenager, but they finally got tired of the teenager yelling to "(f..) off", "get an (f..) life", "(f..) grow up" etc. The teenager is as big as the tenant and that their grandmother, with whom they live in the residential property, just stands there while the teenager yells at them and other tenants. The did not threaten the teenager, just yelled. They agreed they took a picture of DL as they just sit there smoking and drinking alcohol.

The tenant denied threatening BL's dog and they would never threaten a dog.

BL does not have proof their dog was sick at all, and they tried to get the vet records from BL. They did not leave chocolate around the property and otherwise they do not have access to the tenant's dog. BL's dog is constantly under the supervision of BL, on a leash at all times, and BL would have noticed their dog eating chocolate, if that was the case. The tenant wrote that BL never put written notices around the property warning other dogs of chocolate about the property.

The tenant referred to their written statement, and affidavits and letters in evidence, from other tenants, who state they never heard the threats alleged to have been made.

Tenant's witness –

JL testified to the following:

They live in the building and have never heard the tenant threaten anyone or BL's dog. The teenager was always causing an issue and yelling at everyone. The issues with the teenager arose because they, the witness, called the teenager's grandmother "poison" and they then began taking up for their grandmother.

Analysis

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

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that the reason set out in the notice is met.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

The landlord alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Regarding the claim made by BL that the tenant has threatened to stab their dog, I find the landlord submitted insufficient evidence to support this allegation. The agent stated they never asked the tenant about such an incident and only reported the allegation to the police. The police report filed in evidence contained the agent's statement, DL's short statement and the tenant's statement. I find there was nothing in the police report which would indicate that the threat was made or was validated. Apart from that, there was no other tenant who claimed to have heard this threat, even though there were often times tenants would gather in the smoking area. The tenant submitted affidavits from other tenants who affirmed that they never heard the tenant make such threats.

Regarding the claim by BL that the tenant has left chocolate about the property, which led her dog go consuming the chocolate and becoming ill, I find this assertion to be wholly unsubstantiated. First, BL acknowledged that their dog is always on a leash when outside their unit and they never saw the dog eat chocolate or that they saw chocolate on the premises, apart from some few M&M type candy pieces after Halloween. Apart from that, there was insufficient proof that BL's dog was violently ill, such as a vet's report, attributing an illness to consumption of chocolate. For this reason, I find the landlord submitted insufficient evidence of this allegation.

As to the allegations around the tenant yelling at the teenager, I accept that yelling at the teenager was not an appropriate response by the tenant to the teenager's yelling. The tenant said that the teenager was cursing at them but acknowledged they should not have yelled back at the teenager. I, however, do not find this rises to the level of

significant interference or a serious jeopardy to the health or safety or lawful right of another occupant of the residential property that is required in ending the tenancy.

I find the landlord is correct in that everyone should feel safe in their home and that everyone has the right not to be the subject of yelling, I find that right is also extended to the tenant. I find the landlord's response to the tenant's complaint of "kids are kids" to be woefully inadequate. The tenant submitted affidavits that the teenager was seen standing over the tenant and yelling.

In the future, the tenant is caution against responding by yelling, and instead report any aggression/yelling to the landlord's agent, who in turn, can investigate the matter, rather than allow the situation to escalate. The tenant is also informed that they should not take photographs of other tenants without permission to ensure their rights to privacy.

Having addressed the claims made in the landlord's 1 Month Notice, and finding insufficient evidence to support those claims, I find the landlord submitted insufficient evidence to prove the causes listed on the Notice.

I **ORDER** that the Notice dated October 31, 2023, is **cancelled**.

I **ORDER** the tenancy continue until it may otherwise legally end under the Act.

For the above reasons, I grant the tenant's application. As the tenant's application had merit, I grant the tenant the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

I do not grant the tenant recovery of the filing fee for both applications, as the tenant could have amended their original application.

Conclusion

The tenant's application for cancellation of the 1 Month Notice dated October 31, 2023 and recovery of the filing fee was successful. The tenant is granted recovery of the filing fee.

The Notice issued by the landlord has been ordered cancelled and is of no force or effect due to the insufficient evidence of the landlords.

The tenancy has been ordered to continue until ended in accordance with the Act.

The 1 Month Notice in the tenant's first application dated of August 25, 2023, was cancelled for the reasons noted above.

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: January 08, 2024

Residential Tenancy Branch