



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, CNC, FFT, FFL

Introduction

This hearing was set to deal with cross applications. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice"). The Landlord applied for an Order of Possession based on the same One Month Notice.

Both parties appeared and/or were represented at the first hearing. The hearing was adjourned and only the Landlord's representative appeared for the reconvened hearing.

As seen in the Interim Decision, I ordered the Landlord to re-serve the Tenant with their evidence. At the reconvened hearing, the Landlord's representative testified the evidence was posted to the Tenant's door on January 18, 2024. The Landlord provided a photograph of the envelope posted to the rental unit door and a Proof of Service signed by the building manager who served the evidence, and a witness. I accepted that the Landlord met their service obligation and the Landlord's evidence was admitted.

Although I had given the Tenant the opportunity to submit rebuttal evidence, none was submitted or served during the period of adjournment. As such, the only evidence I have from the Tenant is the Tenant's oral testimony that was given at the first hearing session.

Issue(s) to be Decided

1. Should the One Month Notice be upheld or cancelled?
2. If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession and if so, when should it take effect?
3. Award of the filing fee(s).

Background and Evidence

The tenancy started on April 15, 2020. The monthly rent is \$1,608.00 due on the first day of every month.

On September 29, 2023 the Landlord issued the subject One Month Notice and posted it to the rental unit door. The Tenant filed to dispute the One Month Notice on October 10, 2023 which is within the 10 day time limit for disputing the notice after taking into account the Residential Tenancy Office was closed on October 9, 2023 due to the Thanksgiving holiday.

The second page of the One Month Notice provides the following reasons for ending the tenancy:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☐ 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
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

In the Details of Events, the Landlord wrote:

Details of the Event(s):
On September 26th 2023 at 4PM, [REDACTED] pet dog [REDACTED] attacked [REDACTED] [REDACTED] had to hide in his bedroom in unit [REDACTED]. [REDACTED] was informed of the situation and came to the unit and locked [REDACTED] in a room. This lead to RCMP & Emergency Medical Services being called to the premises and has adversely affected the safety and physical well being of [REDACTED]
On September 28th 2023, An infraction was issued for urine on the patio, Violating #2 of the lease addendum Rules & Regulations. [Addendum 1: Paragraph #2]
On March 10th 2023, Infraction issued for urine and feces on patio and being washed down to other units, Violating #2 of the lease addendum Rules & Regulations. [Addendum 1: Paragraph #2]
On November 22nd 2023, A charcoal pit was found on your balcony, Violating #22 of the lease addendum Rules & Regulations. [Addendum 1: Paragraph #22]

The Landlord submitted that the Tenant's roommate was bitten by the Tenant's dog on September 26, 2023. The roommate provided photographs and a statement to the building manager via email that the Landlord included in its evidence package.

The Tenant responded that he and his roommate had been in dispute about money and his roommate wanting to move out without one full month of notice, at the end of September 2023. The Tenant left for work on September 26, 2023 and while he was at work he received a call from the building manager, telling him to come home. The Tenant returned home and found his roommate sitting on the kitchen floor with the dog sitting nearby. The building manager was not present. An RCMP officer also attended the rental unit and was petting the dog. The dog was not seized. Animal control later contacted the Tenant to enquire about the incident and as a result of their investigation his dog was not deemed to be dangerous or vicious. The Tenant implied that his roommate may have kicked the dog as he had done that before and his roommate may have been looking for an excuse to move out without giving a month's notice. The Tenant suggested the marks on his roommate's body are not consistent with an attack as his dog is strong and an attack would have left greater damage. The Tenant also suggested the scratches on his roommate may be the result of the dog playing with his roommate.

The Landlord also submitted that they have received numerous complaints from a tenant living below the rental unit that urine has been dripping from the rental unit balcony onto their balcony. In one instance, the urine travelled toward a cooler that tenant had on their balcony. The building manager also went to the complainant's balcony to investigate and he noted a strong smell of urine. The Landlord provided copies of infraction letters given to the Tenant and photographs of the balcony.

The Tenant responded that the tenant below him complains about things that are untrue, including a previous noise complaint. The Tenant stated that he has not permitted his dog on the balcony in over a year so the Tenant questioned when the Landlord's photographs were taken. The Tenant also claimed that one of the photographs of dog feces could not be taken from the roof, as the Landlord described.

With respect to the charcoal pit on the balcony, the Tenant explained he had won it in a raffle and that it had never been used. The Landlord did not pursue the issue of the charcoal pit and explained the Landlord's primary issue of concern relates to the Tenant's dog.

The Tenant stated he had time stamped photographs to show what his balcony looked like when the infractions were alleged to have taken place; however, the Tenant did not submit those photographs despite giving the Tenant the opportunity to do so.

I noted that the Landlord had indicated on the One Month Notice that the Tenant has engaged in illegal activity and I asked the Landlord what the illegal activity was. The Landlord responded that that reason was checked in error. Accordingly, I did not consider this reason any further.

Before ending the reconvened hearing, I explored an effective date for an Order of Possession should the Landlord's succeed in obtaining an Order of Possession. The Landlord requested an order with an effective date of March 31, 2024 to give the Tenant a reasonable amount of time to move out.

Analysis

Should the One Month Notice be upheld or cancelled? If the One Month Notice is upheld is the Landlord entitled to an Order of Possession?

Where a notice to end tenancy comes under dispute, the Landlord bears the burden to prove the Tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The reason for ending the tenancy, as indicated on the One Month Notice, corresponds to section 47(1)(d)(ii) of the Act. Under this section, a landlord may end a tenancy where the tenant has "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant".

The first event described on the One Month Notice concerned an alleged dog attack involving the Tenant's roommate. The Tenant's roommate is not a tenant under the tenancy agreement. A roommate who is not a tenant is considered an occupant. An occupant does not have any rights under the Residential Tenancy Act; however, they are still owed a duty of care that does not seriously jeopardize their health or safety while on the property. I have reviewed the evidence with a view to determining whether the Tenant's dog seriously jeopardized the health or safety of the Tenant's roommate.

I find the photographs provided to the Landlord by the Tenant's roommate demonstrate a dog bit the roommate in more than one place. In one photograph, the imprint of the dog's upper and lower teeth can be seen in the skin of the Tenant's roommate. In other photographs I see what appears to be flesh gouged from an arm and a leg, not just scratches as suggested by the Tenant, and there is significant bruising. Although I reject the Tenant's suggestion that the marks may be from the dog being playful, the Landlord did not call the roommate as a witness so that he could be cross examined.

The Tenant suggested his roommate may have kicked the dog and without examination of the witness, I am left uncertain as to whether the dog attacked or acted out of defence. Of consideration is that the police attended the scene and did not deem the situation so dangerous or significant that they had animal control attend immediately. Rather, animal control called the Tenant sometime later and I have not been presented any evidence to suggest their investigation revealed the Tenant's dog is a dangerous or vicious dog. Therefore, I find I am unsatisfied there was an attack of the Tenant's roommate by the Tenant's dog.

The other issue raised on the One Month Notice was the repeated urination or defecation of the Tenant's dog on the Tenant's balcony which has washed down to the balcony below causing contaminated water or urine to land on the balcony of the Tenant below the rental unit and a strong offensive odour. Although the Tenant claims this reason is false and that he has not permitted his dog on the balcony in over a year, the Landlord countered that position at the reconvened hearing, pointing to the Landlord issuing warning notices to the tenant after receiving complaints from other tenants on March 23, 2023 and the building manager observing the strong smell of urine himself on September 28, 2023.

Under section 28 of the Act, every tenant has the right to quiet enjoyment and the Landlord is obligated to protect that right. The right to quiet enjoyment includes many things, including the freedom from unreasonable disturbance. An unreasonable disturbance may be an offensive odour, or urine or feces contaminated water dripping onto a patio. Therefore, if a Tenant is suffering a loss of quiet enjoyment, which is a lawful right, the offending Tenant's tenancy may be ended.

Where a landlord becomes aware that the actions or neglect of one tenant is unreasonably disturbing another Tenant, the Landlord is expected to take sufficient and reasonable action to stop the disturbance. This may include issuing warning notices followed by a notice to end tenancy to the offending tenant if the offending behaviour does not cease, or a landlord may proceed directly to an eviction notice if the action or neglect is such that it is unreasonable to issue warning notice first.

In this case, the Tenant was given a warning notice on March 23, 2023 with respect to animal feces not disposed of properly and a warning notice on September 28, 2023 concerning dog urine on the balcony and a strong urine odour, prior to issuance of the One Month Notice. Despite these two warnings, dog urine was observed on the Tenant's balcony in the morning of October 5, 2023 and dog feces was observed on the balcony later the same day. Even after disputing the One Month Notice, dog urine was

found dripping from the Tenant's balcony onto the balcony below on November 27, 2023 and on November 28, 2023. As such, I accept the Landlord's position that the Tenant has not taken the warning notices seriously, and considering the offending behaviour has continued despite issuance of a One Month Notice, I find it very unlikely the Tenant will take sufficient action to correct this situation. Therefore, I find the Tenant's actions and neglect have put another tenant's lawful right to quiet enjoyment of their unit in serious jeopardy and that is grounds to end the tenancy.

In light of the above, I uphold the One Month Notice and I dismiss the Tenant's application that I cancel it.

Section 55(1) of the Act states that I must grant an Order of Possession to the Landlord if the Tenant files to dispute a notice to end tenancy and the notice complies with the form and content requirements of the Act and the notice is upheld. I have reviewed the One Month Notice and I find it is in the approved form and it was duly completed. Therefore, having upheld the One Month Notice, I find the Landlord is entitled to an Order of Possession.

I find the Landlord's request for an Order of Possession effective on March 31, 2024 to be reasonable and I provide such an order to the Landlord to serve and enforce upon the Tenant.

Is the Landlord or Tenant entitled to recover the filing fee paid for the applications?

The Tenant was unsuccessful in his application and I make no award for recovery of the filing fee he paid.

The Landlord's application for an Order of Possession was unnecessary since the Tenant had already filed to dispute the One Month Notice and a landlord is entitled to an Order of Possession under a tenant's application. Therefore, I make no award for recovery of the filing fee paid by the Landlord.

Conclusion

The One Month Notice is upheld and the Landlord is provided an Order of Possession effective on March 31, 2024 to serve and enforce upon the Tenant.

I make no award for recovery of filing fees paid by either party.

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: February 29, 2024

Residential Tenancy Branch