Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BARTKOWSKI ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 23, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice").

The Tenant appeared at the hearing at 1:30 p.m. as scheduled. The Landlord and his lawyer appeared at the hearing 10 minutes late. The hearing process was explained to the parties and nobody had questions when asked. The Tenant and Landlord provided affirmed testimony.

The Landlord and his lawyer advised that the landlord name on the Application should be the company name and I amended the Application accordingly. This is reflected in the style of cause.

The Tenant and Landlord submitted evidence prior to the hearing. The parties agreed they had exchanged evidence and raised no issues with service of the evidence.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties but have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

A written tenancy agreement was submitted as evidence and both parties agreed it was accurate. The Landlord and Tenant entered into the agreement November 4, 2002 for a month-to-month tenancy starting November 1, 2002. The rent was $625.00 monthly due on the first of each month. Both parties agreed rent is now $765.00.

The Landlord testified that he served both pages of the Notice to the Tenant personally on April 16, 2018. The Tenant agreed with this.

The Tenant testified that she filed the Application on April 23, 2018. The Landlord did not take issue with this.

The Notice is not dated by the Landlord. The lawyer for the Landlord submitted the Notice should be amended to comply with section 52 of the *Residential Tenancy Act* (the "*Act*"). The Tenant submitted the Notice should not be amended.

The Notice lists the grounds as follows:

☐	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 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. ☒ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant. ☐ jeopardize a lawful right or interest of another occupant or the landlord.
☒	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

In relation to the first ground, the Landlord did not submit the Tenant had engaged in illegal activity. The lawyer for the Landlord submitted that I should consider "damage the landlord's property" and "adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant" as stand-alone grounds for the Notice. The lawyer for the Landlord submitted that the form is not clear and the Landlord is not a lawyer. I did not hear evidence on these grounds for the reasons outlined below.

The Landlord testified regarding extraordinary damage caused to the rental unit by the Tenant's daughter who bangs her head against the walls as part of her disability. He said he entered the unit and was surprised at the amount of damage to the walls. He said there were more than 10 holes. He said the holes were bigger than the size of a fist. He said the drywall was dented. He said the damage was quite extensive. He said he should have taken pictures of the holes but he did not think the Tenant would have them fixed so quickly. He said that, although the holes have now been patched, the

patches are only roughly finished and not painted. The Landlord raised the concern that the daughter is still living in the unit and the damage might reoccur.

The lawyer for the Landlord went through the photos submitted by the Tenant showing the patches on the walls where repairs have been done. He said the photos show the following: four patches in the living room photos; nine patches in the hallway photos; four patches in the kitchen photo; two patches in the entrance photo; three patches in the first bedroom photo; at least two patches in the bathroom photo; and at least three patches in the second bedroom photo. The lawyer said it is hard to tell from the photos if the patches are sanded but they are not primed or painted. The lawyer submitted that ordinary damage would be day-to-day damage such as spilling coffee, whereas here there were multiple large holes all over the unit which is not ordinary.

The Landlord had submitted an Affidavit. In it he says he entered the unit early April as he was showing a potential purchaser the building. He says he was shocked when he went into the unit as there were “dozens of significant unrepaired indents in the gyproc in every room” and “dozens of old holes and indents to the walls that had been patched by someone who was not a professional contractor”.

The Tenant admitted the holes were caused by her daughter. The Tenant had submitted a letter from her daughter’s doctor stating that her daughter is “profoundly mentally disabled” and requires full time supervision. The letter says the daughter “has epilepsy, and fairly frequent focal seizures”. The Tenant said her daughter had been banging her head on the walls for most of the time they have lived in the unit. She said the Landlord had previously patched three holes in the bedroom 10 years ago. She said the holes were covered with paper when the Landlord first came into the unit and therefore he could not have known the size of the holes unless he removed the paper. She said the size of the holes varied and were cracks and indents. She said there was no structural damage caused to the unit. She said she had the holes fixed April 23, 2018 and that the Landlord had two weeks to take pictures of the holes. She said the Landlord had entered the unit between the date he observed the holes and the date she had them fixed. She said the cost of the repairs was $121.00 in material and $288.00 in labour. She said the repairs took 11 hours. She submitted receipts and invoices to support this. She submitted this was not extensive damage. She could not say whether her daughter would continue to bang her head against the walls or whether further damage would occur in the future.

The Tenant had provided written submissions. Her submissions say the Landlord was aware of this issue from the beginning of the tenancy and never did annual inspections

or asked about this issue. She says the Landlord repaired two spots about 10 years ago and one spot one or two years ago. She says this became an issue when the Landlord did a walk-though of the unit with potential purchasers on April 7, 2018. She says the Landlord was in her unit April 9, 2018 and April 11, 2018 to do sink repairs.

The Tenant had submitted photos showing the repairs of the holes; however, the quality of the photos is such that I cannot see the patches or repairs.

In reply, the Landlord said he observed the holes as he lifted the paper to see how deep the holes were. He said the drywall was broken.

The lawyer for the Landlord made submissions regarding the repair of the holes. He said drywall is cheap. He raised the issue of the usual cost of labour. He pointed out that the patches are not painted. He said the holes are far outside ordinary damage and the cost of repair is irrelevant.

Analysis

A notice issued pursuant to section 47 of the *Act* must comply with section 52 of the *Act* pursuant to section 47(3) of the *Act*. Section 52(d) of the *Act* states that a notice to end tenancy must "state the grounds for ending the tenancy". Section 68(1) of the *Act* allows an arbitrator to amend a notice to end tenancy if the recipient "knew, or should have known, the information" omitted and it is reasonable to do so in the circumstances.

The Notice lists two grounds. The first ground relates to illegal activity that has damaged the property and adversely affected other occupants. The Landlord did not submit that the Tenant had engaged in illegal activity. I did not amend the Notice or consider the checked grounds as stand-alone grounds separate from illegal activity. In my view, amendments under section 68(1) of the *Act* should be limited to minor mistakes or omissions. Here, the Landlord listed the wrong ground for the Notice which is not a minor mistake or omission but a fundamental defect. In my view, it is not reasonable to amend the grounds for a notice to end tenancy under section 68(1) of the *Act*.

Further, I do not accept that there is anything confusing or unclear about the grounds listed on the back of the Notice. The Notice is not a legal document but a form written in plain language meant to be understood by the average tenant and landlord. It is clear from the format and wording of the Notice that the boxes checked by the Landlord relate to illegal activity. It is clear the boxes checked are subsets of the first sentence. The

grounds indicated do not make sense without reference to the first sentence. It is also clear that the appropriate box to have checked in the circumstances is directly above the box relating to illegal activity.

Given the above, I have only considered the second ground listed in the Notice which is extraordinary damage caused to the unit.

A landlord may end a tenancy for extraordinary damage caused to a rental unit under section 47(1)(f) of the *Act*.

Based on the testimony of both parties, I find the Landlord served the Tenant with the Notice in accordance with section 88(a) of the *Act* and that the Tenant received the Notice on April 16, 2018.

Based on the undisputed testimony of the Tenant, I accept she filed the Application on April 23, 2018 and therefore within the time limit to dispute the Notice set out in section 47(4) of the *Act*.

The Notice does not comply with section 52 of the *Act* as required by section 47(3) of the *Act* as it is not dated by the Landlord; however, I would have amended the Notice pursuant to section 68(1) of the *Act* if not for my decision regarding the grounds for the Notice.

Although this is the Tenant's application, the Landlord has the onus to prove the grounds for the Notice.

I find the Landlord has failed to prove the grounds for the Notice. There was no dispute that the Tenant had repaired the holes in the walls prior to the hearing. The Landlord did not provide sufficient evidence regarding the effect of the holes on the unit or building despite the repairs. I do not accept that the patched and repaired holes amount to extraordinary damage because they are not sanded, primed or painted. The Tenant said there was no structural damage caused to the walls of the unit and the Landlord did not provide sufficient evidence to refute this. The Landlord said the drywall had been broken. However, the broken drywall had been repaired by the date of the hearing. In the circumstances, I cannot find the Tenant or her daughter had caused extraordinary damage to the unit as of the date of the hearing.

Given the above, the Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

I do caution the Tenant that it remains open to the Landlord to re-serve a One Month Notice for Cause pursuant to section 47 of the *Act* based on the alleged disruption to other tenants caused by the Tenant's daughter as I have not considered this issue given the defect in the grounds for the Notice.

I make no orders on the filing fee for the application as the Tenant did not request this.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

I make no orders on the filing fee for the application as the Tenant did not request this.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 1, 2018

Residential Tenancy Branch