



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened by teleconference on April 29, 2022, to deal with the tenant's application (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord and other issues.

The parties listed as attending on the cover page of this Decision attended. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 65 minutes, at which time the hearing was adjourned due to the length of time. An Interim Decision was issued on May 1, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the same parties, except for landlord's agent BL, attended.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, the tenant's advocate confirmed receipt of all the landlord's evidence.

I have reviewed all oral, written, and other 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 in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove the causes listed on the 1 Month Notice?

Should the 1 Month Notice be cancelled or upheld?

Background and Evidence

The testimony at the hearing was that this tenancy began in March 2014, for a monthly rent of \$925 and a security deposit of \$425 paid by the tenant.

There is a history of dispute resolution proceedings between the two parties, involving prior 1 Month Notices to end the tenancy being served to the tenant. In a hearing on August 30, 2021, the parties resolved the matter of a 1 Month Notice dated April 25, 2021, served to the tenant, and other issues. The parties settled the matter by the tenant agreeing to comply with the terms of the tenancy agreement, the Act and any applicable Provincial Health Orders, in the Decision of August 30, 2021.

A hearing was held on January 21, 2022, on the matter of the tenant's two applications contesting two additional 1 Month Notices issued by the landlord. The first application related to a 1 Month Notice dated November 23, 2021, served by the landlord, for a move out date of December 31, 2021. The tenant filed a repeated application, which was heard on the same day. That dispute related to the 1 Month Notice dated December 12, 2021, for a move out date of January 31, 2022. Although the hearing was scheduled to hear both applications on both 1 Month Notices, in a Decision of January 21, 2022, another arbitrator, conducted the hearing on the causes listed on the first Notice of November 24, 2021. The arbitrator cancelled the second 1 Month Notice of December 12, 2021. In the Decision of January 21, 2022, the other arbitrator also cancelled the November 24, 2021, 1 Month Notice. Five days later, the landlord served the tenant another 1 Month Notice, which is the subject of this dispute.

As the matters were referenced in this dispute, and for the reason the landlord's counsel filed the past documents, I reviewed the past Decisions and 1 Month Notices. I find that

the Details of Causes listed on the landlord's 1 Month Notice of December 12, 2021 were similar and in parts, identical to, the Details of Causes listed in the present application. While the argument was made by the landlord that the landlord was allowed to pursue another 1 Month Notice right away as the merits of the December 12 Notice was not considered, the counter to the argument by the tenant and advocate was that the matters had been resolved with the Decision of January 21, 2022.

While I find the other arbitrator cancelled the Notice of December 12, 2021, containing the same details, I have elected to proceed on the consideration of the merits of the 1 Month Notice before me, as the previous arbitrator did not make specific findings.

In accordance with the Rules, the landlord proceeded first to prove the alleged causes listed on the Notice.

The Notice was dated January 26, 2022, for an effective move out date of February 28, 2022. The tenant confirmed receiving the Notice on January 26, 2022 and their application was made on January 27, 2022.

The cause listed on the Notice, filed in evidence by both parties, alleged that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so and non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

In the Details of Causes portion of the first Notice, the landlord wrote:

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):

In that the tenant was taken to Dispute Resolution Services on or about August 30, 2021 in which he agreed to "Henceforth, the tenant will comply with all provisions of the tenancy agreement, the Act and any applicable Provincial Health Orders". Since that time, he has failed to reinstall the building supplied window coverings (section 24), nor has he removed the rattan blind that he was requested to reapply for permission to leave up on his balcony rail. The tenant has had additional occupants in excess of 14 cumulative days in a calendar year, without getting the landlords written permission, around 4 people all at the same time, have spent over or around 44 nights with the tenant since 1 September (section 19). During October the building was having its windows replaced when entering the tenant's unit, the tradesmen mentioned 'how filthy the unit was'. When the tenant was given a Breach Letter on this and other matters, he harassed the manager and his wife at their unit. The tenant returned to the manager's unit and as he was out the tenant harassed the manager's wife and made verbal threats at the same time.

[Reproduced as written]

In summary and relevant part, the landlord submitted that the rental unit was unclean as it was full of mold.

Counsel submitted a written brief in support of the Notice.

The landlord denied maliciously harassing the tenant because of the prior hearing outcome or singling out the tenant, as the landlord claims there are serious violations of the Act and tenancy agreement.

As to the breach of a material term, counsel submitted that the tenant failed to reinstall the building supplied window coverings, nor did he remove the rattan blind that he was requested to reapply for permission to leave up on his balcony. Counsel submitted that under term 24 under the written tenancy agreement, the tenant may not replace any window coverings supplied by the landlord and that the tenant must clean them at reasonable intervals. Under term 15, the tenant must obtain the landlord's written consent to remove or repair equipment or appliances supplied by the landlord.

Counsel submitted that the tenant removed the building-supplied window coverings without permission, despite repeated requests to reinstall them.

As to the issue of additional occupants under terms 18-19, the landlord may stop the tenant from having guests under reasonable circumstances, but if the number of occupants is unreasonable, the landlord may serve a notice to end the tenancy. Term 19 states that only persons listed on the tenancy agreement may occupy the rental unit, and any person occupying or residing in the rental unit without the landlord's permission for more than 14 cumulative days will do so contrary to the Agreement.

Counsel referenced Tenancy Policy Guideline 13.

Counsel submitted that the tenant had additional occupants in excess of 14 days/year and by the landlord's estimation a total of 4 people have simultaneously spent over 44 nights in the rental unit since September 1, 2021. Counsel argued that the unauthorized guests are now occupants. Counsel submitted that the landlord is not attempting to restrict the tenant from occasional guests.

Counsel said that the tenant has admitted to having a cousin living in the rental unit and this has been going on for years.

Counsel argued that the tenant has violated terms 15, 30, and 32 of the tenancy agreement, which required the tenant to maintain reasonable health, cleanliness and sanitary standards in the rental unit and to remove garbage, refuse, food scraps and recyclable materials from hallways and other areas. Further the tenant must follow housekeeping practices that minimize the occurrence or accumulation of mould or mildew.

Counsel submitted the following argument:

31. **The Tenant's unit is frequently covered in dirt, filth and even mold. This includes soiled dishes, pots and pans with spilled food; large amount of grime and dirt on the floors, appliances and counters; and an extreme amount of heated clothing and items that present a fire hazard. The Landlord has repeatedly requested in writing that this be rectified, but the Tenant has failed to do so. This violates the requirement for health, cleanliness and sanitary standards and is grounds for eviction. Likewise, the requirement to remove garbage and refuse from the unit properly. This issue originally rose in mid-2021, when contractors carrying out June 2021 repairs on sheet rock complained about the filthy condition of the unit, including black mold on the window sills in the two bedrooms. These are all health and safety concerns, and violations of the tenancy agreement. Such conditions rise well above reasonable wear and tear, or anything to that effect. While the Tenant's materials may indicate he's done so basic cleaning for the purposes of this Hearing, the long history of uncleanness to date indicates that more likely than not it will continue to regress to the unclean state it's generally been in to date. Furthermore, the photos provided are selective and do not cover all of the items mentioned above.**

[Reproduced as written]

Counsel submitted that the tenant's repeated, continuous, and multiple breaches of material terms of the tenancy agreement and the Act entitles the landlord to an order of possession of the rental unit.

Tenant's and advocate's submissions –

In his application, the tenant wrote the following:

*a hearing was held on jan 21 2022 to resolve 2 evictions case number ***** and case number ***** was in favcor of the tenant . the landlord feels this is wrong and has given a eviction 2 days after recieving a legal decision from rtb were the claims were dismissed and the eviction cancelled' the landlord are maliciously*

harrassing the tenant because the outcome of hearing did not favor them . the landlord is singling the tenant out from other tenants.

[Reproduced as written except for anonymizing identifying information]

The advocate submitted that the settled agreement was very general and any concerns surrounding the tenancy agreement does not give rise to a 2nd 1 Month Notice. The advocate submitted that the terms referred to in the tenancy agreement were general in nature and not sufficient to evict the tenant.

The tenant submitted that the curtains the landlord gave him are now up and installed, as the landlord installed them when they replaced the window. The tenant said that he took the rattan down, even though he had permission from a previous landlord that he could install the rattan.

The tenant said that his girlfriend has never lived with him, although she sometimes stayed as she was a bus ride away, and that she has now moved to another city and does not visit at all.

The advocate stated that the landlord's evidence is just the landlord's personal recollections and does not constitute cause.

To dispute that his rental unit was "filthy", the tenant submitted photos taken the day he received the 1 Month Notice or the next day, according to the tenant.

The tenant said he spoke to the tradesperson installing the windows, the tradesperson said he did not have any issues with the rental unit and that he would never say that.

The advocate said that the landlord needs to give specific deadlines in giving notices to the tenant to correct the issue in the notice. The multiple notices to end the tenancy call into question the landlord's good faith.

The tenant said that he keeps a clean house, garbage is not kept in the rental unit, and he empties his trash every Sunday.

The advocate asked the tenant about a letter he received from the landlord on November 22, 2021, asking why the tenant went downstairs to talk to the landlord to find out about the letter. The tenant admitted they got into an argument about the letter

as it was about the blinds the landlord installed. He was told by the landlord to leave. The tenant admitted that he swore at the landlord when he began speaking about his guests. The tenant confirmed being upset when he got another notice to end the tenancy 5 days after the hearing on the previous two notices to end the tenancy. The tenant submitted that the notices show a pattern by the landlord and said there was no specific reasons listed in the current 1 Month Notice.

Tenant's statutory declaration –

Filed in evidence was the tenant's declaration, in which he addressed the issues at hand. In part, as to the guests and visitors, the tenant wrote that he shares custody of his two minor children and that his son's name is listed on the written tenancy agreement. The tenant said he has partial custody and his children visit occasionally for holidays and weekends, and as both children are teenagers, they visit at their own preference. The tenant wrote that in 2018 he had a friend visit for about 20 days, with the verbal permission of the landlord. In 2019, the tenant's cousin stayed for about 4 months, with the landlord's verbal permission. The landlord even gave a key to the tenant's cousin. The tenant submitted that his long time friend, MS, and her 3 children have come over for visits and they occasionally stay overnight. MS now lives in another city.

Tenant's witness (SP) –

SP said that the building was 50 years old and that he lives directly below the tenant. SP said his window was replaced about a year ago and that he had mold in his window.

Landlord, CL testimony –

CL stated that the tenant called him and his wife, BL, offensive names and used obnoxious language.

The tenant said that he called CL a name when he placed a camera outside one of his children's bedroom, which the landlord finally removed. The tenant said he was uncomfortable about the camera being pointed at his child's bedroom, so he changed bedrooms. The tenant said that the landlord CL has also called him a name.

Both parties agreed that the issue with the blinds and rattan have been resolved as of the day of the hearing.

Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

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 the onus to prove their claim and the claim fails.

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a One Month Notice for a variety of causes. In this case, the landlord alleged that the tenant breached a material term of the tenancy agreement was not corrected within a reasonable time after written notice to do so and non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

As to the issue of a breach of a material term, the landlord referred to sections 24 and 19 of the written tenancy agreement.

Section 19 refers to Additional Occupants. While the 1 Month Notice claims that the tenant has had additional occupants in excess of 44 nights since September, the Details in the 1 Month Notice failed to list what, where, and who caused the issue and the dates, times and names. I find these are insufficient details to support the 1 Month Notice.

When reviewing the landlord's list of exhibits, I did not find warning letters or any letters at all referencing this matter, which I find lead me to find the landlord has submitted insufficient evidence to support this issue. Further, despite the wording of the written tenancy agreement, I also refer to the Residential Tenancy Regulations 9, which states that a landlord must not stop a tenant from having guests under reasonable circumstances. I find the landlord has not submitted evidence to show that the tenant having guests is unreasonable. Despite the restriction of 14 days in the written tenancy agreement, section 5 of the Act states landlords and tenants may not avoid or contract out of the Act or regulations.

For all these reasons, I find the landlord submitted insufficient evidence to support a breach of section 19 of the written tenancy agreement.

As to section 24 of the written tenancy agreement, the carpets and window coverings, the parties agree that the window coverings issue has been resolved and I therefore find this matter is moot.

For the above reasons, I find the landlord submitted insufficient evidence to prove that the tenant violated a material term of the tenancy agreement.

As to the second cause listed, the landlord refers to a settled agreement contained in a dispute resolution Decision of August 30, 2021. I find this settled agreement vague and not required. Tenants and landlords are already under a legal obligation to comply with the tenancy agreement and the Act, and residents are under an obligation to comply with Provincial Health Orders. It was not clear to me why these terms were necessary to be recorded in a Decision of the RTB. Apart from that, I have already addressed the landlord's claim of a breach of a material term, which I found unsupported by the evidence.

Counsel submitted that the tenant violated terms 15, 30, and 32 of the tenancy agreement regarding reasonable health, cleanliness and sanitary standards in the rental unit and removal of garbage, refuse, food scraps and recyclable materials, but this was not listed on the 1 Month Notice. However, I find it necessary to address this issue. While the landlord listed that the rental unit was "filthy" when the tradesperson entered, nothing further was mentioned on the Notice, as to specifics. I have reviewed the photographic evidence of the landlord and all were from October 14, 2021. I have reviewed the tenant's photographic evidence, which he said was on or the day after January 26, 2022. I find the tenant's more current evidence shows that on the day the Notice was issued, the rental unit was in a state of reasonable cleanliness.

As a result of the above, I find the landlord has submitted insufficient evidence to support the causes listed on the 1 Month Notice dated January 26, 2022.

Therefore, I grant the tenant's application and **order** the One Month Notice dated April January 26, 2022, is cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

I dismiss the remaining issues in the tenant's application, with leave to reapply.

Cautions to the parties –

After hearing the evidence during the hearing, I determined it necessary to issue cautions to the parties.

Landlord's cautions –

The 1 Month Notice before me was the fourth 1 Month Notice issued to the tenant between April 25, 2021 and January 26, 2022. All Notices were cancelled. Following the last hearing on two of the Notices, the landlord almost immediately issued the tenant another 1 Month Notice, which was the subject of this dispute. It was clear to me that the landlord was dissatisfied with the outcome of the hearing on January 21, 2022, as a result.

Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment can occur with frequent and ongoing interference by the landlord. The repeated issuance of unsupported Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

I therefore inform the landlord that further attempts to end the tenancy for unsupported reasons may constitute harassment which could form a claim by the tenant for compensation for loss of quiet enjoyment and devaluation of the tenancy. Further, this Decision may form a part of the record for consideration by another arbitrator in future dispute resolution matters, should this occur.

All of the issues listed on all four Notices have now been fully dealt with. It is expected that the landlord will not issue the tenant a 1 Month Notice for any past issues as they would have been resolved or would be too remote in time to be relevant. This is not to say that other matters will not occur from here on.

Cautions to the tenant –

Although I have cancelled the Notice in this case, due to my findings herein, I find the evidence shows, and the tenant confirmed, that the tenant has used rude and offensive language and yelled at the landlord's agents.

I inform the tenant this behaviour is unacceptable, even if the tenant was frustrated at being given a fourth 1 Month Notice in less than a year.

A landlord is entitled to and in fact, obligated, to conduct the business of being a landlord in running a safe residential property for the benefit of all tenants, free from interference from the tenant.

The tenant is now informed that should he continue to use rude and offensive language to the landlord or to yell at the landlord, this may be considered repeated behaviour which could lead the landlord to issue the tenant another 1 Month Notice, and if they choose, the landlord may use this Decision as support for their Notice.

I also caution the landlord that they may also not use rude or offensive language to the tenant.

It is clear that the parties have an acrimonious relationship. However, both parties are to conduct themselves in a respectful and courteous manner towards each other going forward.

The tenant is cautioned that if he intends to rely upon the landlord's permission to act counter to the written tenancy agreement, such as hanging non landlord issued window coverings, or having someone stay for long periods of time, the permission should be in writing.

Conclusion

The tenant's application seeking cancellation of the 1 Month Notice is granted as I have ordered the 1 Month Notice issued on January 26, 2022 is cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

The balance of the tenant's application for other claims was dismissed, with leave to reapply, in the Interim Decision in this dispute.

The parties have been issued cautions.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 9, 2022