Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant October 04, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 30, 2022 (the "Notice")
- To recover the filing fee

The Tenant appeared at the hearing. D.S. and B.S. appeared as agents for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

B.S. confirmed the correct Landlord name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started October 01, 2019.

The Notice was submitted. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

2. Breach of a material term.

The Details of Cause section of the Notice outlines the following three incidents:

- September 30, 2022 – the Tenant tried to grab B.S.'s cell phone out of their hands while B.S. was video recording an inspection of the rental unit. The Tenant "attempted to wrench [the phone] from [B.S.'s] hands by bending [B.S.'s] hand/wrist backwards." The Tenant blocked the video recording and turned the phone off. The RCMP were called about this incident.

- September 25, 2022 – the Tenant's son accessed the building with a key in breach of the tenancy agreement.

- September 25, 2022 – the Tenant had a freezer brought into the building without permission of the Landlord in breach of the tenancy agreement. The Tenant had been reminded September 22, 2022, that they require the written consent of the Landlord to bring appliances onto the property.

The parties agreed the Notice was served on, and received by, the Tenant on October 01, 2022.

In relation to the grounds for the Notice, B.S. said the grounds include an issue with the Tenant not having insurance. I asked B.S. to point to where the insurance issue is noted in the Notice and B.S. acknowledged it is not. I told B.S. I would not hear on the insurance issue because it is not noted in the Notice.

In relation to the Tenant grabbing B.S.'s phone, B.S. testified as follows. B.S. was inspecting the rental unit and told the Tenant they would record this. B.S. was video recording the inspection. The Tenant came up behind B.S. and grabbed B.S.'s phone and tried to wrench it out of B.S.'s hands. The Tenant used two hands to try to wrench B.S.'s phone out of B.S.'s hands whereas B.S. only had use of one hand because they were holding an item in their other hand. The Tenant bent B.S.'s hand backward. The Tenant caused B.S.'s phone to shut off. The Tenant finally let go of the phone and B.S. was able to record again. B.S. finished inspecting the rental unit and then left. The Tenant physically interfered with B.S. which raises questions of safety. The Landlord needs to do monthly inspections and, if the Tenant is going to physically interfere with agents for the Landlord, they will have to have RCMP attend and supervise the inspections.

D.S. testified as follows. D.S. witnessed the inspection of the Tenant's rental unit by B.S. D.S. saw how the Tenant "mangled" B.S.'s hand. D.S. stayed and continued the inspection with B.S. after the incident of the Tenant grabbing B.S.'s phone. B.S. and D.S. called the RCMP about this incident and the RCMP called the Tenant. This is the most serious incident to happen in the rental unit building. D.S. can no longer trust the Tenant.

In relation to the Tenant giving an unauthorized person a key to the building, B.S. testified as follows. The Tenant's son was living in the rental unit in June which was not permitted. The Tenant's son had access to the building and rental unit in June. The Tenant was told in June that their son had to move out or the Tenant would be evicted. The Tenant's son did move out. On September 30, 2022, the Tenant's son was seen entering the building with a key. The Tenant's son was unloading a U-Haul of items into the rental unit which caused B.S. and D.S. concern because of the history with the Tenant's son living in the rental unit without permission in June. B.S. spoke to the Tenant's son who said they were moving their grandmother out of another city. The Tenant's son having a key to the building is a breach of term 22 of the tenancy agreement. The tenancy agreement states that term 22 is a material term. The Landlord sent the Tenant a cautionary notice about the Tenant's son on June 21, 2021, and this is what the Landlord is relying on as a breach letter in relation to the September

30, 2022, incident. After the June 21, 2021 letter, there was the one incident on September 30, 2022, of the Tenant's son having the key to the building.

D.S. testified that they cannot be in the building alone anymore because they do not know who the Tenant is giving keys to. D.S. testified that they have seen the Tenant's son coming down the elevator. D.S. testified that the Tenant's son is living in the rental unit again. D.S. testified that the Tenant was not present when the Tenant's son entered the building with a key.

B.S. and D.S. stressed the seriousness of the Tenant's son having a key to the building on September 30, 2022, given the history of the Tenant's son living in the rental unit without permission in June and July of 2021.

In relation to the Tenant moving a freezer onto the property, B.S. testified as follows. Term 15 of the tenancy agreement states that the Tenant needs authorization from the Landlord prior to bringing appliances onto the residential property. On September 22, 2022, the Tenant was given written notice that they require the Landlord's permission to bring appliances onto the property. The Tenant bringing a freezer onto the property was a significant interference and unreasonable disturbance of other tenants and the Landlord. Moving the freezer without notice to the Landlord disturbed other tenants of the building who complained verbally to B.S. There is no documentary evidence of other tenants complaining about this issue in the evidence. Bringing a freezer onto the property also disturbed the Landlord because B.S. did not know what was going on and the freezer is a liability issue.

In relation to grabbing B.S.'s phone, the Tenant testified as follows. B.S. entered the rental unit and said they would record the inspection. The Tenant realized B.S. was video recording the inspection and went in front of B.S. and clasped their hand over the phone and told B.S. they cannot video record. It is illegal for B.S. to video record the Tenant's belongings. The Tenant held onto B.S.'s phone. The Tenant did not hurt B.S. The Tenant is 63 years old and did not do what B.S. and D.S. are accusing the Tenant of doing. The Tenant used their left hand to hold B.S.'s phone and did not use both hands as alleged.

In relation to giving their son their key, the Tenant testified as follows. The Tenant's son has not lived in the rental unit since July 2021. In September 2022, the Tenant's mother had to move to a care home and the Tenant assisted with moving their mother's belongings out of their mother's residence. The Tenant brought items from their

mother's residence to store in the rental unit. Currently, their mother shares a room in the care home; however, when their mother moves to another room, they will bring their mother's belongings back to their mother. The Tenant's son was helping with the move and the Tenant gave their son their keys so their son could go ahead of the Tenant and start unloading items at the rental unit. The Tenant arrived at the rental unit 10 minutes after their son. The Tenant's son does not have their own key to the building.

In relation to the freezer, the Tenant testified as follows. The Tenant did bring a deep freeze into the rental unit. B.S. told the Tenant the freezer had to be removed immediately and the Tenant did remove the freezer from the rental unit and property. B.S. has never re-attended the rental unit to see that the freezer is gone.

I asked B.S. and D.S. if they agree the Tenant attended the rental unit 10 minutes after their son on September 25, 2022. D.S. disagreed with this and said the Tenant can be seen entering on the video submitted and that it was much later. Neither D.S. nor B.S. pointed to where in the video it shows the Tenant entering the building.

B.S. did not know whether the Tenant has removed the freezer from the rental unit and building.

The Landlord submitted video of B.S. confronting the Tenant's son and another individual who are moving items into the rental unit September 25, 2022. One of the individuals mentions they are emptying another place, their mom gave them the keys and their mom is on their way.

The Landlord submitted three further videos from September 25, 2022. I have reviewed the outline of digital evidence provided by the Landlord and have noted all relevant details in this decision.

The Landlord submitted video of the inspection. Part 1 of the video shows the interaction between the Tenant and B.S. It is clear the Tenant put their hand over B.S.'s phone and questioned B.S. about video recording. B.S. has a verbal reaction to this, and D.S. has no reaction to this. Part 2 of the inspection shows B.S. and D.S. in the rental unit continuing to film, continuing to engage with the Tenant and continuing to argue with the Tenant for six minutes. Although there was verbal disagreement between the parties in Part 2, there was no physical interactions at all.

The Landlord provided written submissions. The written submissions state that the Tenant was given a cautionary notice on July 11, 2021, about the Tenant's son living in the rental unit. The written submissions state that the Tenant was given a letter September 26, 2022, about the September 25, 2022, events, and breach of term 22 of the tenancy agreement. The written submissions state that B.S. called the RCMP about the Tenant grabbing B.S.'s phone after the incident after reflecting on the incident. I have read the remainder of the Landlord's written submissions and do not find that they add anything relevant to the details outlined in this decision.

The Landlord submitted a caution notice to the Tenant from July 11, 2021. The incident outline states:

> Tenant is in breach of our contract see section 19 of our tenancy agreement. Your visitor has stayed in [the unit] for more than 2 week and must move out within 5 days of receiving this notice. Should your visitor not move out a 1 Month Notice to end your tenancy will be served.

The Landlord submitted a September 22, 2022, letter to the Tenant about getting written permission from the Landlord before bringing major appliances onto the property.

The Landlord submitted a September 26, 2022, letter to the Tenant about observing the Tenant's son enter the building with a key contrary to section 22 of the tenancy agreement. The letter also takes issue with the Tenant storing other people's items in the rental unit.

D.S. submitted a statement about the incident between B.S. and the Tenant during the inspection of the rental unit. D.S. states that the Tenant attacked B.S. from behind, grabbed B.S.'s phone and twisted it back with both hands while B.S. tried to hang on with one hand. D.S. states that what the Tenant did to B.S. "looked extremely painful". D.S. states that they now must constantly look over their shoulder when on the property due to fear of what the Tenant will do next.

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*") and the following subsections:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies…
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) **significantly** interfered with or **unreasonably** disturbed another occupant or the landlord of the residential property…(emphasis added)
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> **(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so** (emphasis added)

RTB Policy Guideline 08 deals with breaches of material terms and states:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - **that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and**
> - **that if the problem is not fixed by the deadline, the party will end the tenancy.**
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of

> proof. A party might not be found in breach of a material term if unaware of the problem.
>
> (emphasis added)

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice October 01, 2022. The Application was filed October 04, 2022, within time.

In relation to the incident of the Tenant grabbing B.S.'s phone, I accept the Tenant's version of events over that of B.S. and D.S. I have reviewed Part 1 and Part 2 of the video of the inspection. The video shows the Tenant put their hand over B.S.'s phone to cover the video recording. The video does not show that the Tenant did anything further. I find the reaction of B.S., and absence of a reaction from D.S., in Part 1 of the video calls into question B.S. and D.S.'s version of events. I find it unlikely that B.S. would have reacted the way they did, and D.S. would not have reacted, if the Tenant tried to "wrench" the phone out of B.S.'s hand, bent B.S.'s hand backward in a painful manner, "mangled" B.S.'s hand or "attacked" B.S. as alleged. I also find it unlikely that B.S. and D.S. would have continued the inspection as they did, as shown in Part 2 of the video, if their allegations of what occurred are accurate. I also find it unlikely that B.S. and D.S. would have needed time to reflect on the incident before calling police if the Tenant acted in the way claimed by B.S. and D.S. I accept the Tenant's version of events and find B.S. and D.S. are exaggerating the seriousness of the incident.

I also note that B.S. and D.S. claim to be afraid for their safety to such an extent that D.S. does not feel comfortable being on the property alone. The Tenant has lived on the property for three years and there has been one incident that occurred while B.S. and D.S. were in the Tenant's rental unit video recording the Tenant's belongings. I find it unlikely that B.S. and D.S. now fear for their safety, or the safety of others, given B.S.'s reaction, and the lack of a reaction by D.S., in Part 1 of the inspection video. I find it highly unlikely that B.S. and D.S. would have continued the inspection for six minutes, engaged with the Tenant, argued with the Tenant and waited to call the police about the incident if they feared for their safety or the safety of others. Again, I find B.S.

and D.S. are exaggerating the seriousness of the incident and claimed consequences of the incident.

Section 47(1)(d)(i) of the *Act* sets a high bar for eviction by the use of the words "significantly" and "unreasonably". The circumstances leading to eviction pursuant to this section of the *Act* must be serious. I am not satisfied that one incident in three years of the Tenant clasping their hand over B.S.'s phone when B.S. was video recording the contents of the Tenant's rental unit is sufficiently serious to warrant ending this tenancy. To be clear, I do not condone the Tenant clasping B.S.'s phone and it may be that a similar future incident will lead to the end of this tenancy. However, I do not find that this one incident meets the high bar set out in section 47(1)(d)(i) of the *Act*.

In relation to the Tenant giving their son their key to the building and rental unit, I accept the background of this incident as described by the Tenant because B.S. and D.S. could not know what lead to the Tenant's son attending the rental unit building and entering with a key. I accept that the Tenant gave their keys to their son to start unloading items into the rental unit before the Tenant arrived at the rental unit.

Section 22 of the tenancy agreement states:

> SECURITY. The door to the rental unit must be kept closed, and in the tenant's absence, locked. The tenant may not install, change or alter a lock or security device, such as a dead bolt, door chain, or alarm system, **or make extra keys to the rental unit or residential property without the landlord's written consent. Entry by any person to the residential property or rental unit by unauthorized possession of a key is a breach of a material term of this Agreement.** (emphasis added)

B.S. relied on a June 21, 2021 caution notice as a breach letter as required by RTB Policy Guideline 08. I find B.S. meant the July 11, 2021 caution notice because the Landlord did not submit a June 21, 2021 caution notice. The July 11, 2021 caution notice is clearly about the Tenant having a visitor for more than two weeks and the visitor, the Tenant's son, needing to move out. The caution notice is not about the Tenant lending their keys to another person or section 22 of the tenancy agreement. Further, the caution notice was sent more than a year before the September 25, 2022 incident when the Tenant's son entered the rental unit building with a key. The breach alleged is the September 25, 2022 incident. The Landlord was required to send the Tenant a breach letter in relation to this incident pursuant to RTB Policy Guideline 08.

The Tenant then had an opportunity to address the breach. Here, there was no further incident of the Tenant lending their keys to anyone and therefore the Landlord did not have grounds to issue the Notice based on breach of a material term for the September 25, 2022 incident.

Further, I find section 22 of the tenancy agreement prohibits the Tenant from making extra keys without the Landlord's consent and others using those extra keys to enter the rental unit or building. I do not accept that the Tenant made extra keys. I accept that the Tenant gave their son their keys to go ahead and start unloading items before the Tenant arrived at the rental unit. I find the Tenant's actions to be completely reasonable and question the reasonableness of B.S. and D.S. for taking issue with the Tenant's actions. I do not accept that the Tenant's actions are prohibited by section 22 of the tenancy agreement as I find the issue addressed by section 22 of the tenancy agreement is the Tenant making extra keys and others entering the rental unit and building with those extra keys.

In relation to the freezer, there is no issue that the Tenant brought a freezer into the rental unit because the Tenant acknowledged this. I do not accept that the Tenant bringing a freezer into the rental unit significantly interfered with or unreasonably disturbed others. I do not accept that it interfered with or disturbed other tenants because B.S. could not point to documentary evidence of this. I do not accept that it significantly interfered with or unreasonably disturbed B.S. or D.S. because I do not find it to be a serious issue that could significantly interfere with or unreasonably disturb a reasonable person.

Given the above, I find the Landlord did not have grounds to issue the Notice. I find B.S. and D.S. have exaggerated issues and created issues where there does not need to be issues. I find the issues alleged in the Notice are not significant and are not the type of issues that should lead to an end of this tenancy. I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award the Tenant reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct $100.00 from their next rent payment as reimbursement for the filing fee.

Conclusion

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

The Tenant can deduct $100.00 from their next rent payment as reimbursement for the filing fee.

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: November 14, 2022

Residential Tenancy Branch