



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing was conducted by conference call based on an Application for Dispute Resolution filed by the Tenant November 17, 2022 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated November 16, 2022 (the “Notice”).

The Tenant appeared at the hearing. The Landlord appeared at the hearing with their son and Legal Counsel. I explained the hearing process to the parties. The parties, other than Legal Counsel, provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I asked about service of the hearing package and evidence. Legal Counsel confirmed receipt of the hearing package and Tenant’s evidence. The Tenant said they received the Landlord’s evidence late; however, they received it March 20, 2023, which was not late under rule 3.15 of the Rules.

The parties were given a chance to present relevant evidence and submissions. I have considered all 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. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started in 2015.

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

1. Tenant or a person permitted on the property by the Tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
2. Tenant has engaged in illegal activity.

The Notice includes details of the grounds.

The parties agreed the Notice was served on the Tenant in person November 16, 2022.

The Landlord relied on the Tenant opening other tenants' mail and video recording another tenant's guest in their boxers as illegal activity. Legal Counsel could not point to a law that was broken and said the Tenant breached other tenants' right to quiet enjoyment.

Legal Counsel said the following issues are the basis for the Notice. The Tenant is rude and aggressive towards other tenants. The Tenant video recorded another tenant's guest who was in their boxers in the common area of the house. Three tenants have moved out of the house because of the Tenant's behaviour.

The Landlord provided text messages from the Tenant and other tenants to prove the issues between the parties. The Tenant provided the video of them recording another tenant's guest in a common area of the house and Legal Counsel relied on this to prove the Tenant's behaviour. Legal Counsel also relied on a doctor's note provided by the Tenant and said it supports the Landlord's position.

Legal Counsel said the names of other tenants who complained about the Tenant have been removed from the evidence because the other tenants are scared and uncomfortable being involved in the dispute.

The Tenant denied they are causing the issues claimed. The Tenant explained that they video recorded another tenant's guest because they were documenting a noise complaint. The Tenant said the other tenant and their guest constantly disturbed the Tenant. The Tenant said they were not told in writing about the issues now raised by the Landlord.

Analysis

The Notice was issued under section 47 of the *Act*.

The Landlord has the onus to prove the grounds for the Notice under rule 6.6 of the Rules.

The Landlord has failed to prove the grounds for the Notice based on the evidence provided.

The Landlord has not pointed to illegal activity by the Tenant as this term is described in RTB Policy Guideline 32.

The grounds in the Notice requiring **significant** interference, **unreasonable** disturbance and **seriously** jeopardizing health, safety or a lawful right, set a high threshold. The actions of the Tenant must be serious. The Landlord's evidence must be convincing.

Here, the Landlord has not provided convincing evidence showing the Tenant's behaviour meets the high threshold for ending this tenancy for the following reasons.

This has been an eight-year tenancy. The Landlord has provided evidence from only three other tenants of the house. It appears that the three other tenants lived in the house at the same time and had a relationship. The Tenant complained to the Landlord about one of these tenants before that tenant complained to the Landlord about the Tenant.

The complaints are informal text messages sent to the Landlord. There are no formal written complaints provided. There are no witness statements from two of the other

tenants. There is no objective evidence of the Tenant's behaviour such as audio or video recordings showing the Tenant's behaviour rises to the level required by section 47 of the *Act*. Legal Counsel relied on the video submitted by the Tenant; however, I have watched this and it does not support ending this tenancy under section 47 of the *Act*.

The accusations against the Tenant in the text messages are vague without details of serious incidents involving the Tenant. The text messages are confusing because the Landlord removed names and it is hard to tell who is saying what about whom.

The letter from one of the tenants outlines allegations against the Tenant that are not particularly serious. In general, the evidence shows the three other tenants found the Tenant uncomfortable and unenjoyable to live with.

I note that there are no formal notices sent by the Landlord to the Tenant telling the Tenant their behaviour is an issue, other than the Notice.

In the circumstances, the Landlord has not provided convincing evidence showing the Tenant's behaviour meets the high threshold for ending this tenancy under section 47 of the *Act*. I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: April 05, 2023

Residential Tenancy Branch