



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC-MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed receipt of the 1 Month Notice dated October 31, 2022, which was posted on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on November 3, 2023, 3 days after posting.

Preliminary Issue—Tenant's Application for an Extension of Time to File their Application for Dispute Resolution

The tenant filed their application for dispute on November 14, 2022 although the 1 Month Notice was deemed to have been received on November 3, 2022. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant testified that they required the assistance of their advocate to file this application and due to the holidays, they were unable to obtain assistance to file their application until November 14, 2022, the first business day after the long weekend.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as *“the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure”*.

I accept the testimony of the tenant that they required assistance with the filing of this application, and there was a delay due to a long weekend, and coordination with their advocate’s schedule. On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has provided a compelling reason for the late filing of their application. Under these circumstances, I am allowing the tenant’s application for more time to make their application.

Issues to be Decided

Should the landlord’s 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2021. Monthly rent is currently set at \$790.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$373.00, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice to End Tenancy dated October 31, 2022 on the following grounds:

The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that they had served the tenant with the 1 Month Notice as this is the second incident in a short period of a time where the tenant was involved in an altercation with another resident. The landlord testified that the tenant resides in low income housing for seniors, where many of the residents are frail. The landlord testified that the consequences of a push could cause serious injuries, and that the landlord had an obligation to protect all residents.

The first incident took place on February 11, 2022 where there was an incident involving the tenant and another tenant in a common area where food donations are put out. The other tenant reported that the tenant had pushed them, and luckily was caught by another tenant. The landlord served the tenant with a letter on February 14, 2022 about the incident, stating that the incident was corroborated by another tenant.

The tenant was reminded that they lived in a community with other seniors, and that they “are frail, slow in doing things, including moving and thinking”, and that “there is no reason to ever push or become physical with another tenant”.

On October 27, 2022, an incident took place in the common room. The landlord submitted a video of the incident involving a tenant and another tenant who allegedly got pushed by the tenant. The landlord states that the tenant had entered the common room instead of waiting outside as instructed, and sat down to watch tv. When asked to leave by another tenant who was designated to help with the food distribution, the tenant refused. The landlord states that the other tenant attempted to take the remote from the tenant, and was pushed, causing the tenant to fall to the floor. The landlord states that the tenant still refused to leave until the tv was unplugged. The landlord states that the tenant had to attend the hospital. The landlord is concerned as this is the second incident within a short period of time, and after the tenant was provided a written warning about their behaviour.

The tenant testified that on October 27, 2022, they were minding their own business when the other tenant burst into the room and started arguing with the tenant. The tenant testified that it was the other tenant who exhibited aggression, and attempted to grab the remote. The tenant testified that the other tenant ended up grabbing his shirt, ripping it. The tenant testified that they then lost their balance and fell. The tenant points out that the landlord did not provide any hospital or medical records to support the statements made.

The tenant also denies pushing the other tenant on February 11, 2022. The tenant testified that they did gently use their finger to guide them away, and that the other tenant was offended because they were Muslim. The tenant denies pushing the other tenant.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As noted above, I had allowed the tenant's late filing of their application. As the tenant filed their application disputing the 1 Month Notice, and having issued a notice to end this tenancy, the landlord has the burden of proving the landlord has cause to end the tenancy on the grounds provided on the 1 Month Notice.

In review of the evidence and testimony before me, I find the incidents described by the landlord to be extremely concerning. In light of the fact that the tenant resides in a community with other senior residents, I find that that even a minor incident could result in serious consequences, including serious injury or even death. That being said, I find that the landlord's evidence falls short in supporting that the tenant had pushed or assaulted another party. Although the video submitted does show some sort of altercation, the video is not clear enough to determine whether the other party had fallen or was pushed. The tenant provided a contrasting account of what had taken place, with the other party grabbing at the tenant. I further note that although there was reference to possible injuries and attendance at the hospital, the landlord did not provide any evidence to support this.

The tenant was also allegedly involved in a previous incident in February 2022 which involved another tenant in the common area. Other than the warning letter, no additional evidence was provided to support what had taken place. The landlord did not provide any video recordings or any witness statements or testimony, nor did the landlord

provide any medical records to support any injuries sustained during this incident. As the onus falls on the landlord to support the grounds of the 1 Month Notice, I find that the evidence is not sufficient to support the issuance of an Order of Possession for the grounds provided on the 1 Month Notice.

I allow the tenant's application to cancel the 1 Month Notice dated October 31, 2022. The tenancy is to continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated October 31, 2022. The tenancy is to continue until 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 *Residential Tenancy Act*.

Dated: April 13, 2023

Residential Tenancy Branch