Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding MGEY INVESTCO 604.1 INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL, CNC – MT, FFT**

Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession for cause. The tenant applied for cancellation of a One Month Notice to End Tenancy for Cause and an extension of time to make the application.

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

I confirmed the parties exchanged their respective hearing materials upon each other and neither party took issue with service. Accordingly, I admitted the materials of both parties and considered it in making my decision.

Preliminary Matter

1. Did the tenant file outside of the time limit for doing so? If so, is the tenant entitled to an extension under section 66 of the Act?

Under section 47(4) of the Act, a tenant in receipt of a One Month Notice has 10 days after receiving the notice to file an application to dispute it.

It is undisputed that the subject One Month Notice was sent to the tenant via registered mail on August 14, 2023. The tenant picked up the registered mail on September 3, 2023 and filed to dispute the One Month Notice on September 4, 2023.

The landlord argued that the tenant is deemed to have received the One Month Notice on August 19, 2023 and the deadline to file to dispute the One Month Notice was August 29, 2023. The landlord argued that the tenant did not present evidence to

support that an “extraordinary circumstance” prevented the tenant from filing by August 29, 2023.

The tenant testified that he had been out of town on and off in August 2023 while visiting family on “the island” and his ill grandmother in a different town. During an inspection of the rental unit on August 26, 2023 the maintenance person informed the tenant that the landlord was trying to contact the tenant. The tenant found Canada Post registered mail notice cards in his mailbox and went to pick up the registered mail on September 3, 2023. The tenant then filed to dispute the One Month Notice the very next day.

The tenant clearly filed to dispute the One Month Notice within 10 days of receiving it on September 3, 2023.

The landlord is relying upon the deeming provision of section 90 of the Act in arguing the tenant is outside of the time limit for disputing the One Month Notice.

Section 90 of the Act deems a person to be in receipt of a document five days after mailing. This provision is intended to dissuade parties from avoiding service by refusing to accept or pick up their mail. It is also intended to aid in calculating deadlines where the actual received date of the document is unknown. In this case, the deeming provision is not applicable because the One Month Notice was received and the actual received date is known. Therefore, there is no need to “deem” the tenant served.

To conclude the tenant filed outside of the time limit, as argued by the landlord, I would have to find the deeming provision takes precedence over the actual received date of the One Month Notice. However, the courts have found that the deeming provisions of section 90 are rebuttable and not a conclusive presumption. Residential Tenancy Policy Guideline 12: *Service provisions* provides extensive information concerning service provisions, including the deeming provisions found in sections 11 and 12 of the policy guideline. In section 12 of the policy guideline it states, in part:

> *Generally, the objective of service of documents is to give notice to the person who has been served that an action has been or will be taken against them. There is substantial case law that has held that the purpose of service is fulfilled once notice has been received.*
>
> ***Deeming provisions should not be relied on to calculate time to respond to service of a document**. The date a person **receives** documents is what is used*

to calculate time. The Legislation contains provisions for the time frames within which a person must act upon having received documents. For example, s. 47 allows a landlord to end a tenancy by giving notice to the tenant. S. 47 (4) states that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant ***receives*** *the notice. Therefore, a tenant must file their application for dispute resolution within 10 days of* ***receipt*** *of the notice.*

[My emphasis added in bold]

The tenant in this case did not avoid or refuse to accept service. The tenant did in fact pick up the registered mail. The tenant picked up the registered mail on September 3, 2023 and I find that is the date he received the One Month Notice, meaning he had 10 days from September 3, 2023 to file to dispute the One Month Notice. In filing to dispute the One Month Notice on September 4, 2023 I find the tenant met his time limit and there is no need to consider granting an extension.

In light of the above, I proceed to consider whether the One Month Notice should be upheld or cancelled?

Issue(s) to be Decided

1. Should the One Month Notice be upheld or cancelled?
2. Award of filing fees.

Background and Evidence

The tenancy started on May 1, 2021 and the tenant is currently required to pay rent of $2479.50 on the first day of every month. The tenant paid a security deposit of $1197.50 and a pet damage deposit of $1197.50.

The subject One Month Notice does not contain a signature of an agent for the landlord. Rather, the signature space has typewritten initials of the corporation in quotation marks. I asked the landlord's agent appearing at the hearing if he prepared the One Month Notice and he acknowledged that he did.

The subject One Month Notice provides the following reasons for ending the tenancy:

- *Tenant or a person permitted on the property by the tenant has:*
  - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
  - *Seriously jeopardized the health and safety or lawful right of another occupant or the landlord*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to adversely affect a lawful right or interest of another occupant of the landlord*

In the Details of Cause 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):

June 22, 2023: Tenant used recurring racial slurs, name calling, homophobic language, inappropriate conduct against regular landlord team on the building webmail communications. His language definitively targeted east europeans, same sex couples and by implication other genders, races, nationalities and religions. The building team and tenant profile is diverse, with differing socio-economic groups, blacks, Jews, asian, indo aryan and latino.

Tenant also leaves a large, intimidating, unfriendly canine unattended and roaming at the unit, hindering building affairs. Not only specifically in June 2023, but also previously in 2022.

Original lease expressly stipulates cause for notice to end tenancy of racial slurs, inappropriate language, or comments.

The landlord's evidence of the tenant using a racial slur on June 22, 2023 consisted of an email where the tenant asked for the identity of the person who was sending him emails about an inspection. At first the tenant asks if it is the agent that he knows by name. The author of the emails does not identify themselves. The tenant then asks if the author is "the suave Eastern European gentlemen?"

As for as using homophobic language, the landlord pointed to an email where the tenant wrote [name of maintenance person omitted by me for privacy purposes]:

But I am gay... and a minority... so... anyhow. Interesting play. Anyhow. Feel free to send your thing to the rtb and we can discuss at a hearing.

As I said, let me know your plans for inspecting the place. And agaaaaain confirm that [redacted] has a key, cuz I'm pretty sure he doesn't and we shouldnt waste his time

As for the tenant's dog, the landlord pointed to an email the tenant wrote on June 22, 2023 that states [name of maintenance person redacted by me]:

> Check with [redacted]..
>
> And as per usual, there is a large dog in there so safety wise you may want to accommodate another date so she's not startled.

The landlord stated there was a similar message in 2022 as well.

The tenant responded that he does not consider any of the content in his emails to be racist or homophobic. If anything, the landlord's responses to him were more offensive.

The tenant denies his dog is aggressive. Rather, he was intending to ensure everyone entering the unit is comfortable since he has a large dog and to avoid startling the dog by having people that do not reside in the unit enter.

The tenant suspect the landlord is looking for a reason to evict him so that he can re-rent the unit for more money.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice. The burden of proof is based on the balance of probabilities.

In order for a landlord's notice to end tenancy to be effective, section 52 of the Act, requires, among other things, that the notice be signed by the landlord, or landlord's agent where applicable. The purpose of signing a document is to provide a way to verify its origin and authenticity. The landlord in this case is a corporation, thus it requires authorized persons to sign a notice to end tenancy. Without a signature anybody could issue a notice to end tenancy and the origin of the notice or its authenticity would not be verifiable.

Digital signatures are becoming commonplace; however, digital signatures are accomplished through applications and require verification. I find that merely typing initials of the corporation in quotation marks is not sufficient to meet the signature requirement.

Failing to sign a notice to end tenancy is in itself a basis to find the notice invalid and of no effect. However, the landlord's agent appearing at the hearing confirmed he issued the One Month Notice and the tenant did not question that. To bring resolution to the parties I amend the One Month Notice pursuant to the discretion afforded me under section 66 of the Act; however, I issue the following ORDER to the landlord:

I ORDER, effectively immediately, the landlord must ensure that the name and signature of the agent who issues any future notice to end tenancy, or any other document that requires a name and signature, is provided in the applicable space on the form.

As for the reasons for issuance of the One Month Notice, I provide the following findings and reasons.

I have reviewed the string of emails exchanged between the parties on June 22, 2023. I do not see the tenant's comments as being racial slurs. Rather, I see the tenant trying to communicate with the landlord, repeatedly, that the maintenance person may not have a key for his unit to do the inspection and the tenant was trying to determine who was communicating with him, which I see as a reasonable request, since the author did not identify themself.

After asking if the author was the landlord's agent that he knows by name, the tenant asked if the author if he was "the suave eastern European gentlemen".

The word "suave" means charming, confident, and elegant, typically used in describing a man. I interpret the tenant's use of the word as an intended compliment.

The word "gentlemen" is also complimentary as it means: chivalrous, courteous, honorable, polite or a formal way of referring to a man.

The tenant used the description of "eastern European" which refers to a region. While a person's nationality or origin has no bearing in a tenancy relationship, I view the tenant's use of the words as being an attempt to physically describe the person he believes he may be communicating with in the email. However, I do not see the words as being derogatory especially when they are flanked with complimentary terms. Therefore, I find eviction is not warranted based on these emails.

Ironically, it was the landlord that continued to send emails to the tenant asking for his opinion of “black people” and “jews” and the landlord’s tirade that included the following email:

> Hi
>
> We want you out of this building immediately.
>
> We will not tolerate your homophobic racial profiling and attack on our trusted building personnel.
>
> We suggest you depart end of this month or next.
>
> We reserve the right to bring this before the RTB, Human Rights Council and Police Hate Unit as necessary.
>
> Your sick type is not welcome in this building.
>
> Without apology

During the hearing, the landlord’s agent was acted a number of times if he was the author of the above email. The landlord’s agent was very evasive and unresponsive but eventually admitted he authored the above email.

Having reviewed all the emails before me, I find the tenant’s position, that the landlord’s responses were offensive to be more accurate. However, this is not an eviction proceeding of the landlord but my hope is that the landlord can see how his responses were excessive and unnecessary.

As for the tenant’s dog, I find there is insufficient evidence to conclude the dog is significantly interfering with the landlord’s ability to conduct business of the landlord. I view the tenant’s proposal for an alternative date and time for the inspection to take place, when he or his roommate are home, as a safety measure to avoid startling the dog. It is common knowledge that dogs may react defensively when an unfamiliar person enters their domain or that or their human guardian. It is not to say that something will happen but it is possible for any dog, large or small.

While the landlord is not obligated to reschedule an inspection because the tenant has a dog, I view the tenant's request as merely a proposal and not grounds to end the tenancy.

Th landlord did not provide me with evidence to support the tenant has engaged in illegal activities and I do not end the tenancy for that reason.

In light of the above, I grant the tenant's application and I cancel the One Month Notice with the effect that the tenancy continues at this time. The landlord's application is dismissed in its entirety.

I award the tenant recovery of the $100.00 filing fee. **The tenant is authorized to deduct $100.00 from a subsequent month's rent to recover this award and in doing so the landlord must consider the rent paid in full.**

To avoid future dispute over inspections and the dog, I order the following to both parties:

I ORDER, effective immediately:

- **The landlord must serve the tenant with a proper written 24 hour notice of entry using one of the permissible methods of service that includes the date, time and reason for entry, as required under section 29(1)(b) of the Act.**
- **Upon receiving a proper written notice of enter, it is upon the tenant to either ensure he or someone else is home during the inspection or have the dog removed from the rental unit for the inspection.**

Conclusion

The One Month Notice is cancelled and the tenancy continues at this time.

I have issued orders to both parties to avoid future disputes.

The tenant is awarded recovery of the filing fee and I authorize the tenant to deduct $100.00 from a subsequent month's rent to recover this award. In doing so, the landlord must consider the rent to be paid in full.

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: December 08, 2023

Residential Tenancy Branch