Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, FF, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The landlord attended the hearing. The tenant MS (the tenant) attended the hearing. The tenant acknowledged receipt of the landlord's evidence. The landlord did not raise any issues with receipt of the tenant's evidence. Both parties 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.

At the hearing, the landlord made an oral request for an order of possession in the event that I found the 1 Month Notice was valid.

Preliminary Issue – Scope of Application

The Residential Tenancy Branch Rules of Procedure, rule 2.3 provides me with the discretion to sever unrelated claims:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenants' claim and hearing from the tenant, I determined that the tenants' claim in relation to cancelling the 1 Month Notice was unrelated to the other issues raised by the tenants. As the 1 Month Notice is the more pressing matter, I dismissed the remainder of the tenants' claim with leave to reapply.

I explained what this meant to the tenant at the hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover their filing fee from the landlord.

Background and Evidence

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

The parties entered into a tenancy agreement on 14 August 2014. This tenancy began 1 September 2014. Monthly rent of $1,700.00 is due on the twentieth. The tenancy is a fixed-term tenancy until 31 August 2015 after which time it set to continue as a month-to-month tenancy.

On 13 March 2015, the landlord's father personally served the tenants with the 1 Month Notice. The 1 Month Notice provided for an effective date of 30 April 2015. The 1 Month Notice set out that it was given for three reasons:

- the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has caused extraordinary damage to the unit; and
- the tenant has not repaired damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

The tenant completed a move-in inspection report on her own. The landlord testified that circumstances were hectic at the commencement of the tenancy and the move-in inspection was overlooked.

The landlord submits that the frequency and timing of the tenant's text messages to him create cause to end the tenancy as the messages constitute significant interference or unreasonable disturbance of the landlord.

The landlord testified that he asked the tenant not to contact him by text before 0800. The landlord testified that on three occasions the tenant contacted him by text before 0800. The landlord testified that he is unable to turn off his phone because it is connected to a security system. The landlord submits that the volume of texts from the tenant is excessive (the landlord estimates over 350 text messages have been received from the tenant). The landlord submits that this is a matter of respect. The landlord testified that he has significant health problems and experienced a recent death in his family.

The tenant submits that she contacted the landlord as required and that the amount of messages did not rise to the standard of "significantly interfered with or unreasonably disturbed".

The landlord provided me with a transcript of all text message communication between the parties. I have reviewed the entirety.

I make the following factual observations regarding the text messages:

- The messages range in date from 13 August 2014 to 18 April 2015.
- The pattern of text message conversation is generally the tenant initiating contact, the landlord responding and the tenant replying.
- The tenant's texting style is to break messages over several texts and is in the nature of stream of consciousness, for example this stream of messages from 3 January 2015:
    - @1927: *I changed the batteries in the thermostat so I am going to see how that pans out…other then (sic) the hot tub what was there…?*
    - @1928: *Ill be home working but do they need me for anything?*
    - @1929: *or nevermind*
    - @1929: *[co-tenant] said the thermostat still blinks*
    - @1929: *so plz send*
    - @1930: *midmorning is fine*
    - @1930: *definitely not aft 4 tmw*
    - @1931: *anytime midmorning til 3*
    - @1931: *and have them call or text so I know*
- In August the tenant sent approximately 41 messages to the landlord and the landlord sent approximately 20 messages to the tenant.

- In September the tenant sent approximately 123 messages to the landlord and the landlord sent approximately 67 messages to the tenant.
- In October the tenant sent approximately 19 messages to the landlord and the landlord sent approximately 10 messages to the tenant.
- In November the tenant sent approximately 39 messages to the landlord and the landlord sent approximately 19 messages to the tenant.
- In December the tenant sent approximately 27 messages to the landlord and the landlord sent approximately 13 messages to the tenant.
- In January the tenant sent approximately 27 messages to the landlord and the landlord sent approximately 9 messages to the tenant.
- In February the tenant sent approximately 30 messages to the landlord and the landlord sent approximately 15 messages to the tenant.
- In March (to date of 1 Month Notice) the tenant sent approximately 5 messages to the landlord and the landlord sent no messages to the tenant.
- Almost all of the text messages directly concern the circumstance of the tenancy. Generally they relate to the commencement of the tenancy, cleaning, repairs, and maintenance.

The following text messages were received from the tenant before 0800:

- 19 September 2014 at 0642:

  Good Morning [Landlord]
  Was wondering if you could give me a one time (sic) free oil change…I stretch (sic) my budget for this month on getting the home cleaned and outside is getting power washed and the yard cleaned up along with the carpets…lol wondering if you could help me out this one time as my vehicle really needs it…
- 24 October 2014 at 0739:

  We need the filters today cause (sic) it is way too cold for us an (sic) we all have the Windows closed. It is the 24th of October and your (sic) controlling when my family can be warm…if you can not come then I will go buy them s nd (sic) you can pay me back for them
- 14 November 2014:
  - At 0704:

    ?
  - At 0750:

    Remember when I said I locked the gate this is why I can not lock it. The winds were and still are horrible. I can not lock the gate for obvious reasons. And I have had to place the garbage can behind it for the mean time. [picture included]

I was provided with a text message from the landlord to the tenant sent 19 September 2014 at 1028:

> *Hi [tenant]…first…I'm not up that early so if u could please not send anything to me before 8am. That would be great! Second…I'm sorry I can't help you out with the oil change.*

The landlord submits that a broken drawer provides the basis for the allegations of extraordinary damage, and required repairs pursuant to subsection 32(3).

The landlord submits that the tenants are responsible for repairing a broken drawer. The landlord submits that the drawer could have only broken in that manner if the drawer was bearing excessive weight. On 21 February 2015, the landlord sent a letter to the tenants demanding that the tenants repair the drawer within thirty days. The landlord testified that this drawer is between eight and ten years old. The landlord rejects that the damage could have predated the tenancy. The landlord submits that the complaint is not included in the tenant's move-in inspection report. The landlord further submits that if there was an issue with the drawer, the tenant would have told him.

The tenant testified that she marked in the move-in inspection report that the cupboard for the drawer was loose and that the drawer would catch. The tenant testified that there was only a small screw holding the drawer in place and that this design flaw caused the damage. The tenant testified that she distributed the weight properly between the two shelves. The tenant testified that the shelves were repaired by the end of March.

The landlord testified that the drawer was designed with that size screw. The landlord testified that other than the cupboard, the tenant did not ask the landlord to look at anything else in relation to this part of the rental unit.

I was provided with photographs of the damage to the drawer:

- The drawer is contained within a cupboard.
- The drawer runs on slider rails that are attached to what appears to be particle board.
- The slider joins to the particle board by way of a bracket.
- The particle board contains holes at even intervals for the purposes of attaching the bracket.
- The bracket is plastic.
- The bracket contains a peg.

- This peg is inserted into the desired hole in the particle board.
- A screw is than inserted through the slider, the bracket, the peg, and into the hole.

I was provided with an email from the landlord to the tenant dated 21 February 2015:

> *As for the cupboards, at the beginning of the tenancy, during the inspection, all the cupboards were in good working order. While in your care the cupboards were damaged, therefore the repairs to fix then (sic) would be your responsibility. This is the same as if a window was broken or a towel rack became loose on the wall. These would all be repairs that the tenant is responsible for. This is considered occupancy damage. I expect these repairs to be completed within 30 days.*
>
> *I am beginning to wonder if this house is a good fit for you and your family. You are constantly complaining about problems. This has been happening nonstop since you have moved in. If you feel that this house is not a good fit for your family to live in then I will let you move prior to your lease being up. Just give me proper notice that you will be vacating. …*
>
> *Finally, as requested before, if you could please refrain from early morning messages unless it is an emergency that would be much appreciated.*

I was provided with an email from the tenant to the landlord dated 21 February 2015:

> *YOU EXPECT repairs to be done within 30 days, are you kidding me! You are the landlord and this is normal wear and tear to the home and I wont be fixing anything.*
>
> *You never answer my calls, you take forever to get things addresses (sic) and then I get this email after you receive my money for rent?! I pay you every month in full with no problems.*
> *…*
> *Don't offer me to break my lease early because YOU don't want to deal with us anymore and this is YOUR easy way out, ill (sic) be declining your offer to vacant(sic), so there is no need for your 2wk offer.*

I was provided with a letter sent to the landlord by the tenant on 21 February 2015:

> *By the time you receive this letter, the washer may have been fixed or replaced but was still need the closet fixed at the top of the stairs, and the cupboard draw (sic) in the kitchen fixed which was requested in the text as well as the pantry draws (sic) as the second one broke and fell onto the bottom one which was damaged due to the fall and you have given me 30 days to have this fix (sic), when it is the landlords (sic) responsibility as this is normal wear and tear but I will definitely show RTB the email I received from you about how to fix it.*
>
> *…*
>
> *Also regarding not contacting you prior to 8am as you requested. I have the freedom of speech to message you, and you are certainly welcome to ignore the message until you are available to address the message, but Landlords do not have set hours like a property Management company even if it were an emergency…you wouldn't respond until it was fit for you as you ignore my calls anyways and have since the beginning when we realised you had no interest in fulfilling your side of the contract.*

The landlord provided me with a list of issues that he has resolved over the course of the tenancy, which included:

- cleaning the air ducts;
- repairing the toilet seat;
- replacing the washing machine twice;
- replacing the refrigerator;
- repairing the gate;
- removing the broken hot tub; and
- removing the wire from the hot tub.

Analysis

The landlord has provided three causes for ending this tenancy pursuant to the 1 Month Notice: subparagraph 47(1)(d)(i), and paragraphs 47(1)(f) and (g):

- Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
- Pursuant to paragraph 47(1)(f), a landlord may terminate a tenancy in cases where a tenant or person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

- Paragraph 47(1)(g) of the Act sets out that a landlord may also terminate a tenancy where a tenant does not repair damage to the rental unit or other residential property, as required under section 32, within a reasonable time.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlord submits that he was unreasonably disturbed or significantly interfered with by the frequency of the tenant's text messages. The tenant contacted the landlord regarding numerous issues in this tenancy. Many of these issues were resolved by the landlord as set out in his submissions. I find, on a balance of probabilities, that the tenant had a legitimate interest in resolving these various complaints. It is therefore reasonable that the tenant would communicate to the landlord to convey the issues to him. After reviewing all of the text messages, I did not find the volume to be excessive. When the text messages are viewed in the context of a communication and not individually, the number of text messages sent by the tenant is framed. The tenant's texting style leads to a larger volume of text messages. This explains why the tenant's messages outnumber those of the landlord by a ratio of two to one.

The landlord submits that he was unreasonably disturbed or significantly interfered with by the timing of the tenant's text messages. The tenant initiated three text-message conversations before 0800. One was sent twenty minutes before 0800. The landlord asked the tenant not to send text messages before 0800 in September. The tenant initiated the next early-morning text in October and again in November. I find, on a balance of probabilities, that initiating two text-message conversations before 0800 after being asked not to do so does not constitute behaviour that is unreasonable disturbance or significant interference.

I am also conscious of the timing of the notice relative to the complaints regarding text messages. The last offending early-morning text was in November. The greatest text volume was in September. The 1 Month Notice was issued in March. The distance in time, while not determinative, does raise questions about the connection between the impugned behaviour and the issuance of the 1 Month Notice.

The landlord submits that the broken drawer represents extraordinary damage or in the alternative a repair the tenants were required to fix but did not within a reasonable time.

I find that the damage done to the drawer in no way constitutes extraordinary damage. Extraordinary means something other than ordinary. A drawer collapsing in this manner is not out of the ordinary in any way. The amount of damage is insignificant. I find that

the damage to the drawer is not sufficient to constitute extraordinary damage within the meaning of the Act.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

The tenant submitted that the drawer collapsed because it was poorly constructed. The landlord submitted that the drawer collapsed because it was negligently used. The tenant testified that she knew to split the weight of items evenly between the drawers and knew not to overload the drawers with weight. The tenant testified that she acted in accordance with this knowledge. The landlord bases his submissions on supposition; the tenant had provided me with evidence as to how she used the drawers. The landlord has not provided sufficient evidence that the tenants' neglect or actions caused the damage. I find, on a balance of probabilities, that the tenant was using the drawers in a manner consistent with the standards of drawer use. Accordingly, I find that the damage to the drawer was the result of wear and tear. As the tenants are not responsible for wear and tear, I find that the landlord is not entitled to a notice for cause in relation to the broken drawer and the tenants' failure to repair it.

As no cause set out in the 1 Month Notice has been substantiated, the tenants' application to cancel the 1 Month Notice is allowed. The landlord's application for an order of possession is dismissed.

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. As the tenants were successful in this application, they are entitled to recover their $100.00 filing fee from the landlord. I am aware that this filing fee is based on the higher monetary amount that resulted because of the claims that were severed from this application; nonetheless, I am exercising my discretion to award the tenants the full amount of their filing fee.

Paragraph 72(2)(a) of the Act sets out:

> If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

I order that the tenants are entitled to deduct $100.00 from a future month's rent. Payment of the net amount of rent will satisfy the tenants' obligations pursuant to section 26 of the Act.

Conclusion

The tenants' application is allowed. The landlord's oral request for an order of possession is dismissed. This tenancy will continue until it is ended in accordance with the Act.

The tenants are entitled to deduct $100.00 from one future month's rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 12, 2015

Residential Tenancy Branch