Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC, MNDC, RR, FF

Introduction

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

- an order of possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- cancellation of the landlords' 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;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both tenants appeared. Both landlords appeared. The landlords were assisted by their daughter MS. The tenants' daughter (the agent) acted as the landlords' agent in the course of the tenancy.

The agent testified that she served the landlords' dispute resolution package to the tenants on 23 April 2015. The agent testified that she taped the dispute resolution package to the tenants' door. The tenants appeared and did not contest service. On the basis of this evidence, I find that the tenants were served with the dispute resolution package in accordance with subsection 89(2) of the Act.

The tenant JC testified that the tenants served the landlords with the tenants' dispute resolution package by registered mail. The landlords appeared and did not contest service. On the basis of this evidence, I find that the landlords were served with the dispute resolution package in accordance with subsection 89(1) of the Act.

The agent testified that she personally served the 1 Month Notice to the tenants on 17 April 2015. The tenants appeared and did not contest service. On the basis of this evidence, I find that the tenants were served with the 1 Month Notice in accordance with section 88 of the Act.

Scope of Application

I informed the parties at the beginning of the hearing that I was concerned that we would not have time to cover all aspects of both applications in the time allotted. I informed the parties that the applications in relation to the 1 Month Notice took precedence and as such would be heard first. I informed the parties that if time allowed I would continue to hear evidence in relation to the remainder of the tenants' application.

The hearing lasted 72 minutes. The only issues covered in that time were those in relation to the 1 Month Notice.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding , the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with our without leave to apply.

As the tenants' applications for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided are not related to the 1 Month Notice, I am exercising my discretion to dismiss that portion of the tenants' claim with leave to reapply.

I informed the parties of this decision at the hearing.

This portion of the tenants' claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the tenants entitled to recover their filing fee for this application from the landlords? Are the landlords entitled to recover the filing fee for their application from the tenants?

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 both the tenants' claim and the landlords' cross claim and my findings around each are set out below.

This tenancy began 1 June 2014. Monthly rent of $950.00 is due on the first. The landlords continue to hold the tenants' security deposit in the amount of $500.00, which was collected at the beginning of the tenancy.

The parties' sons were friends. The children no longer play together. The landlord RS testified that the tenant HC prevented the children from playing. The tenants deny this allegation. The tenants allege that it is the landlords that prevented their son from playing with the tenants. The tenants provided me with a letter from a parent of a friend of the tenants' son. That letter set out that the landlord LS prevented the children from playing in the back yard of the residential property.

The agent and landlord RS testified that the tenant HC insulted members of the landlords' family. The tenant HC denies all of these allegations.

The landlord RS alleges that the tenants are harassing his wife and the agent by sending too many text messages regarding use of the laundry facilities and noise from the landlords' dog. The landlord RS testified that the tenants continue to contact the landlord's wife even though the landlord asked that contact to be directed to him. The landlord RS testified that the tenants called him at 2300 when the breaker in their unit tripped. The tenant HC testified that the breaker box is in the landlords' portion of the residential property. The tenant HC testified that she attempted to contact the landlord LS and the agent by text message. The tenant HC testified that she had to contact the landlord RS at that time as items in her freezer were beginning to melt.

The landlord RS testified that the tenants left the smoke detector on for ten or fifteen minutes and that this resulted in firefighters attending at the rental unit.

The landlord RS testified that the tenants have people over until two to three in the morning approximately four or five times per month. The landlord RS testified that the late-night visitors disturb his sleep. The tenants deny this. The tenant HC testified that her brother once stayed the night and left in the morning. The tenant HC testified that the tenants' child has a medical issue and requires sleep so the tenants would not have late-night visitors. The landlord LS testified as to the late-night visitors. The agent translated this testimony as the tenants having late-night visitors two to three times per week. The tenants interjected to say that the landlord LS had actually said "once". I asked the agent to put the question to the landlord LS again. The agent relayed that the landlord LS's testimony was that it did not matter how often the tenants had late-night visitors.

The landlord RS testified that he heard the tenant JC instruct an occupant of the rental unit to leave to oven on to its highest setting and that the tenant JC did not care if the place burned down.

The landlord RS alleges that the landlords' personal property was sold by the tenants. The agent testified that the tenant SC noticed the personal property around the residential property and asked if the landlords would like the tenants to sell the items. The agent testified that the landlord LS agreed. The tenants deny selling these items. The tenants acknowledge that there were some items around the residential property when the tenancy began and that some of the items have been taken away, but deny knowledge or involvement with the removal of these items.

On 17 April 2015, the agent provided the 1 Month Notice to the tenants. That notice set out an effective date of 31 May 2015. The 1 Month Notice set out that it was given as:

- the tenant or person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
    - put the landlord's property at significant risk.

The tenant JC submits that the landlords are attempting to end the tenancy because they do not want to deal with deficiencies to the rental unit and outstanding issues with respect to services under the tenancy agreement. The tenant JC testified that all the problems began when issues regarding the provision of wireless internet and laundry services were raised with the landlords. The tenants denied that there was any basis for the 1 Month Notice.

The landlord RS testified that the tenants are "arrogant" and that they have "overstayed their welcome" and that it is "time to go". The landlord RS testified that the "ladies" are not getting along and that it is best if the tenants leave. The landlord RS testified that "as a tenant I would not talk to my landlord like that". The landlord RS testified that the landlords provide the tenants with verbal warnings but no written warnings. The landlord LS testified that she is upset with the situation and wants the tenancy to end as soon as possible. The landlords' application indicates that the tenants "treat landlord as tenants".

The tenants provided a transcript of text messages. I have reproduced portions of those messages that are relevant:

- Sent 19 March 2015: *I am writing this letter in reference to a incident that happened on March 18th in the evening around 6pm. I was told by my son and his friend who lives next door in the rental suite, that my son's friend was stopped by you from coming on the property and you told him that he can not enter your property….*
- Sent 9 April 2015 @2237: *We have no light in the big bedroom and washroom area….*

[as written]

Analysis

On 17 April 2015, the landlords served the tenants with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord; or
    - put the landlord's property at significant risk.

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. Subparagraph 47(1)(d)(iii) 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 put the landlord's property at significant risk.

In an application for an order of possession on the basis of 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.

In this case the landlords provide the following to show that the tenants significantly interfered with or unreasonably disturbed the landlords:

- alleged late-night visitors;
- alleged issues between the children;
- alleged name calling by the tenant HC;
- alleged harassment through phone calls and text messages; and
- alleged inattention to the smoke detector.

In respect of the significant risk to the landlords' property, the landlords have alleged that the tenant JC told an occupant to turn the oven up to high and leave the door open and stated that he did not care if the rental unit burned down. The landlords also allege that the tenants sold their personal property.

The tenants deny all these allegations.

There is little factual overlap between the testimonies received from the parties. The landlords make allegations that the tenants deny. In this case, I prefer the testimonies of the tenants. I prefer the tenants' testimonies as I found the tenants to be forthright in providing their testimony and found their version of events to be more plausible. Furthermore, the tenants' testimonies were bolstered by contemporaneous text messages and a letter from a neighbour. On the other hand, the landlords' testimonies were inconsistent and were not supported by any documentary evidence.

On the basis of the above credibility finding, I find that the only late-night visitor hosted by the tenants was the tenant HC's brother who stayed the night and left the next morning. One late-night visitor that spends the night does not constitute an unreasonable disturbance or significant interference.

On the basis of the above credibility finding, I find that the tenants did not attempt to prevent the landlords' son from playing with the tenants' son. The childhood disputes between the parties' sons are not a basis for ending this tenancy for cause. Similarly, even if true, the disparaging remarks alleged to have been made by the tenant HC about various members of the landlords' family would not be a basis for ending the tenancy. There is insufficient evidence to show that the interpersonal difficulties between members of the various families rise to such a level as to amount to an unreasonable disturbance or significant interference.

The landlords have not provided any copies of text messages which they find to be harassing. A review of the text message transcripts provided by the tenants does not reveal any harassing text messages. Furthermore, the tenants had a legitimate interest in resolving the dispute regarding services provide under the tenancy agreement. I find that contacting the landlords at 2300 for the purposes of dealing with an emergency repair to the rental unit (that is resetting the breaker) on one occasion is not harassment. As such, I find that the alleged texts and phone calls do not amount to behavior that is an unreasonable disturbance or significant interference.

The landlords allege that the tenants left the smoke detector unattended and that this required firefighters to attend at the rental unit. I find that this does not amount to an unreasonable disturbance or significant interference. A repeated pattern of this may result in justification for a 1 Month Notice, but one event is not sufficient.

I find that the landlords did not have cause to issue the 1 Month Notice on the basis of subparagraph 47(1)(d)(i).

The landlords have also set out as a reason for cause that the tenants put the landlord's property at significant risk. The tenants deny that there is a basis for the notice, including this allegation. The landlords allege that the tenant JC instructed someone to turn the oven on to full and said that he did not care if the rental unit burned down. It is apparent that the relationship between the landlords and tenants has soured. The landlords have not provided evidence that the utterance, if made, was anything more than an empty threat based on the tenant JC's frustration with the tenancy. I find that the landlords have provided insufficient evidence to show, on a balance of probabilities, that this event occurred. Further, and in the alternative, I find that even if it did occur the

landlords have failed to show that the utterance resulted in a significant risk to the landlord's property.

On the basis of the credibility finding above, I find that the tenants did not remove or have removed any of the landlords' personal property. On the basis of this finding this allegation cannot support the 1 Month Notice.

I find that the landlords did not have cause to issue the 1 Month Notice on the basis of subparagraph 47(1)(d)(iii).

As the landlords have failed to substantiate either reason for cause, the 1 Month Notice is cancelled.

As the tenants were successful in their application, I find that the tenants are entitled to recover the $50.00 filing fee paid for their application.

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 reduce their rent in one month to recover the $50.00 award.

As the landlords were unsuccessful in their application, the landlords are not entitled to recover their filing fee for their application.

Conclusion

The landlords' application is dismissed without leave to reapply. The tenants' application to cancel the 1 Month Notice is allowed. The tenancy will continue until it is ended in accordance with the Act.

The tenants are entitled to one $50.00 reduction in their rent so as to recover their filing fee awarded above. Payment of rent net of the $50.00 reduction will satisfy the tenants' obligations pursuant to section 26 of the Act.

The following claims by the tenants are dismissed with leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Leave to reapply is not an extension of any applicable time limit.

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: June 09, 2015

Residential Tenancy Branch