



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDC, LAT, OLC, RP, FF

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;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant KP did not attend this hearing, which lasted approximately 90 minutes. The other tenant HKL, (the "tenant") attended the hearing and confirmed he had authority to represent tenant KP as an agent at this hearing. The owner of the rental unit attended the hearing on behalf of both the owner and landlord (collectively the "landlord") named in the application. The parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Preliminary Issue - Rule 2.3 Sever Unrelated Claims

With respect to the tenants' monetary claim, I find the *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenants' application is the request to cancel the 1 Month Notice and 2 Month Notice. Because the tenants' claim for damages is made under section 67 of the *Act*, I find this part of the application is distinct from the tenants' request that the 1 Month Notice and 2 Month Notice, be canceled pursuant to section 47 and 49 of the *Act*.

Accordingly I find the monetary portion of the tenants' application must be severed and the monetary claim must be dealt with separately through an application under 67 of the *Act*. Therefore the portion of the tenants' application seeking a monetary order is dismissed with leave to reapply.

Preliminary Issue – Tenants' Late Evidence

The tenant testified that on November 9, 2016 he forwarded a 20 page evidence package via registered mail to the landlord. The landlord confirmed receipt of the evidence package on November 14, 2016 but contends this package was received contrary to Rule 3.14 which establishes that documentary evidence must be received by the respondent not less than 14 days before the hearing.

Rule 3.14 sets out that if evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made. The evidence package was served just 9 days prior to the hearing and the tenant did not show this evidence was new and unavailable at the time the application was made. For these reasons, I have not relied on the tenants' 20 page evidence package to form any part of my decision.

Preliminary Issue – Landlord Evidence

The landlord testified that she sent two evidence packages to the tenants. The tenant confirmed receipt of the first evidence package but denied receipt of the second evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's first evidence package.

The landlord testified that on November 14, 2016 she forwarded the second evidence package via registered mail to the tenants. In the absence of a Canada Post receipt or tracking number as proof of service, in conjunction with the tenant disputing service, I cannot find the tenant has been served the second evidence package in accordance with the *Act*. For these reasons, I have not relied on the landlord's second evidence package to form any part of my decision.

Issue(s) to be Decided

Are the tenants entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to have the landlord's 2 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Are the tenants authorized to change the locks to the rental unit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 10, 2015 on a fixed term until May 31, 2016. On June 1, 2016 the tenancy was renewed for another fixed term ending June 30, 2026. Pursuant to a schedule outlined in the tenancy agreement addendum, rent in the monthly amount of \$1,650.00 is payable in ten yearly installments. The parties agreed the tenants have paid the first installment signifying all rent has been paid until June 30, 2017. The tenants remitted a security deposit in the amount of \$812.50 at the start of the tenancy. The tenants continue to reside in the rental unit.

Unknown to the landlord, between May 1, 2015 and May 31, 2016, the tenants conducted daily laundry for their rental business in the rental unit. During this time, the rental unit washing machine was destroyed and a flood occurred in the rental unit. Unaware of what caused the flood or the issue with the washing machine, the landlord replaced the washing machine and absorbed the losses. Additionally, during this time

the occupants of the unit adjacent to the rental unit complained to the regional manager about water damage to the walls, ceiling and deck of their outdoor balcony.

In June of 2016, maintenance tended to the adjacent unit balcony repair work. Maintenance discovered the dryer vent to the adjacent unit was clear; however the dryer vent to the tenants' rental unit was completely blocked with lint and wet with moisture. Conversations between maintenance, the regional manager, and the tenants resulted in the discovery of the tenants business.

On June 21, 2016, strata notified the landlord that the tenants had been operating a commercial laundry business out of the rental unit from May 1, 2015 to May of 2016. The landlord and strata determined that damages incurred by the tenants were a direct result of the unlawful laundry business. Strata levied damages in relation to the adjacent unit's balcony repair to the landlord of the rental unit. The tenants compensated the landlord these damages.

The landlord seeks to end the tenancy effective November 30, 2016. The landlord testified that the primary ground to end the tenancy is that the business operation violates a strata bylaw, which in turn constitutes a breach of a material term of the tenancy agreement.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice and 2 Month Notice on September 24, 2016. Each notice is dated September 23, 2016 with an effective date of June 30, 2017. Beside the effective date on each notice is a handwritten statement that reads,

"the length of pre-paid term, goodwill on the landlord part (if no new damages)."

The grounds to end the tenancy cited in the 1 Month Notice are;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 tenant or a person permitted on the property by the tenant has put the landlord's property at risk
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or landlord
- the tenant has caused extraordinary damage to the unit or property
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The grounds to end the tenancy cited in the 2 Month Notice are;

- the rental unit will be occupied by the landlord or the landlord's close family member

Although the tenant does not dispute operating a rental business that required the use of the rental unit's laundry facilities and that the damages described by the landlord occurred, the tenant disputes the damages were a result of the business.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the property has put the landlord's property at risk. The onus is on the landlord to prove the reasons behind the notice. The landlord provided evidence in the form of testimony, witness statements, letters and photographs.

I find that the tenants breached a material term of the tenancy by operating their business on the premises contrary to the tenancy agreement that the parties had signed. However, in order to end the tenancy on this basis, it is a requirement that the tenants first be notified of the breach in writing and be given an opportunity to correct the breach. I find that the landlord neglected to issue any notification in writing prior to serving the 1 Month Notice and therefore the ground of a material breach would not apply.

That being said, I still find that the tenants' business operation, which was not permitted, still functioned to "put the landlord's property at risk." I find that the excessive use of the laundry facilities put the landlord's property at risk, which is evidenced by the damages. Although the tenants dispute the damages were a result of the business, they have provided insufficient evidence to establish the damages were a result of anything other than the operation of the business.

The move-in condition inspection report does not indicate any damage to the laundry appliances or any repairs were to be completed at the start of tenancy. Therefore, I find it probable that the consistent use of the washing machine led to the demise of the washing machine and flood of the rental unit. I further find based on the documentary evidence that the overuse of the dryer led to the expiry of the dryer and damages to the adjacent unit's balcony. The heavy use of the dryer combined with the failure to empty the dryer vent of lint, as evidenced by a witness statement provided by the landlord, brings the potential risk of fire.

I am satisfied on the evidence that the landlord has established grounds to end this tenancy on the basis that the tenants put the landlord's property at risk. I dismiss the tenants' application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if tenants make an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenants' application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenants' application has been dismissed, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Where a landlord provides an incorrect effective date on a notice to end tenancy, section 53 of the *Act* deems it to be changed. In this situation the effective date given by the landlord was not incorrect but rather subject to conditions. The *Act* does not permit conditions to be placed on the effective date nor does the *Act* permit the effective date to be changed in such circumstances. For these reasons, I find the effective date of the 1 Month Notice remains unchanged and grant the landlord an order of possession effective June 30, 2017 as per the 1 Month Notice issued by the landlord.

As a finding has been made in relation to the 1 Month Notice dated September 23, 2016, and the tenancy is set to end, a finding on the 2 Month Notice dated September 23, 2016 is not required. This portion of the tenants' claim is dismissed without leave to reapply.

The tenant did not provide testimony or evidence in relation to the other remedies sought in the application therefore these portions of the tenants claim are dismissed without leave to reapply.

Because the tenants were not successful in this application I dismiss the tenants' application to recover the filing fee from the landlord.

Conclusion

The tenants' application for a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement is dismissed with leave to reapply.

The tenants' application to cancel the 1 Month Notice is dismissed. An order of possession is granted to the landlord effective June 30, 2017 at 1:00 p.m.

The tenants' application to dismiss the landlord's 2 Month Notice dated is dismissed without leave to reapply.

The tenants' application to change the locks is dismissed without leave to reapply

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The tenants' application for an order requiring the landlord to make repairs to the rental unit is dismissed without leave to reapply.

The tenants' application to recovery the filing fee is dismissed without leave to reapply.

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: November 28, 2016

Residential Tenancy Branch