



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FFT, OLC, LAT
 OPC, OPUM-DR, FFL, MNDC

Introduction

This hearing dealt with two Applications for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 11, 2017, for the Tenant B.K.;
- Cancellation of a 10 Day Notice dated November 11, 2017, for the Tenants R.S. and K.W.;
- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”) dated November 12, 2017;
- Cancellation of a One Month Notice dated November 28, 2017;
- Authorization to change the locks;
- An Order for the Landlord to comply with the *Act*, regulations or tenancy agreement; and
- Recovery of the filing fees.

This hearing also dealt with a cross-application and two Amendments to an Application for Dispute Resolution (the “Amendments”) filed by the Landlord under *Act*, seeking the following:

- An Order of Possession based on the One Month Notice;
- An Order of Possession based on the 10 Day Notices;
- A monetary Order for unpaid rent or utilities;
- A Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on February 6, 2017, at 1:30 P.M. and was attended by the Tenants B.K. and J.A., as well as the Landlord. All parties provided affirmed testimony. The hearing was subsequently adjourned due to the complex nature of the tenancies themselves, and the time constraints for the hearing. An interim decision was made on February 20, 2018, at which time some of the above noted claims were determined. For the sake of brevity I will not reproduce here the evidence summarized in that interim decision or the findings of fact made. As a result, the interim decision should be read in conjunction with this decision.

The reconvened hearing was set for March 12, 2018, at 11:00 A.M. and a copy of the interim decision and the Notice of Hearing were sent to each party by the Residential Tenancy Branch (the "Branch"). The reconvened hearing was convened by telephone conference call on March 12, 2018, at 11:00 A.M. and was attended by the Tenants B.K. and J.A., the Landlord, and two co-owners of the property. All parties provided affirmed testimony.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Preliminary Matter #1

At the conclusion of the hearing on February 6, 2018, the parties were advised that no new evidence was to be submitted and that no new evidence would be accepted for consideration in relation to any of the Applications. The interim decision also included orders prohibiting the parties from submitting a new Application to be crossed with any of the Applications already before me, amending any of the Applications already before me, or submitting new evidence for consideration in these matters.

Despite this direction, the Landlord submitted numerous pieces of documentary evidence to the Residential Tenancy Branch (the "Branch") after the close of the hearing, which I have not considered in rendering my decision in these matters. Further to this, the parties were advised again at the close of the reconvened hearing on March 12, 2018, that no new evidence would be accepted for consideration. Despite this direction, the Landlord again made numerous attempts to submit new and additional documentary evidence to the Branch for my consideration, which I have not considered in rendering my decision.

Issue(s) to be Decided

Of the matters claimed by the parties in the Applications, only the following remained for me to decide on March 12, 2018.

Are the Tenants entitled to an order cancelling either the One Month Notice dated November 12, 2017, or the One Month notice dated November 28, 2017?

If the Tenants are not successful in cancelling either of the One Month Notice's, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is either party entitled to the recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Tenants sought cancellation of two separate notices to end tenancy.

The first notice to end tenancy in the documentary evidence before me is a One Month Notice to End tenancy for Cause (the "One Month Notice") dated November 12, 2017, naming only the Tenant J.A. The One Month Notice has an effective vacancy date of December 31, 2017, and states that it was posted to the door of the rental unit and mailed to the Tenant on November 14, 2017. Although no boxes were checked off on page two of the One Month Notice, the following was written in the details of dispute section:

"This is termination of tenancy on a month to month basis due to sale of the house"

Although the Tenant J.A. was not present, his representative, B.K. testified that J.A. received the One Month Notice on November 14, 2017, along with a letter advising him that he was required to move out by 1:00 P.M. on December 31, 2017.

The Landlord confirmed that the above noted One Month Notice was served in the manner described as the property is for sale.

A second One Month Notice naming B.K. and J.A is also in the documentary evidence before me. The second One month Notice, dated November 28, 2017, has an effective vacancy date of December 31, 2017, and gives the following grounds for ending the tenancy:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord or the residential property;
- The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The One Month Notice also states that it was personally served on the Tenants on November 29, 2017, and the Tenants confirmed receipt of the One month Notice on that date. Although page one of the One Month Notice lists only the Tenants B.K. and J.A., the Landlord testified that it is meant to apply to all of the Tenants as he served the One Month Notice along with a schedule of parties listing R.S. and K.W.

Both parties provided significant testimony and documentary evidence in relation to the above noted grounds for ending the tenancy. I have summarized the relevant evidence and positions of the parties below.

The Landlord testified that the Tenants placed the property at risk by smoking inside the premises, using the BBQ close to the house, moving a protective barrier and flags from around the main water valve, failing to purchase liability insurance and placing a lock on a door that grants access to a water valve without permission. The Tenants denied smoking in the house or moving any barriers or flags from around a water valve. Although the Tenants acknowledged that J.A. placed a lock on his door, they testified that the Landlord granted him permission for this and stated that the Landlord has been offered a key. The Tenants testified that although there is a BBQ up against the house, it has never been used and is simply there for storage purposes. The Tenants also acknowledged that they did not purchase liability insurance for the home but argued that this is the responsibility of the Landlord as they would only be responsible to obtain content insurance for their own belongings, should they wish to do so.

The Landlord testified that prior to the service of the One Month Notice dated November 28, 2017, several of the Tenants had paid rent late on one or two occasions. The Tenants acknowledged that they may have paid rent late on one or two occasions but stated that did not pay rent late at least three times prior to being served with a One Month Notice.

The Landlord also testified that the Tenants have significantly interfered with or unreasonably disturbed him by calling and e-mailing him regarding their complaints, threatening to go to arbitration, calling the RCMP, and being aggressive towards him and the other co-owners. The Tenants denied being aggressive and stated that the Landlord routinely attends and enters the property without permission or prior notice and has on occasion been asked to leave or been walked out. The Tenants also stated that they have every right to make complaints about the property, to seek arbitration for unresolved tenancy matters and to call the police if necessary.

Further to this the Landlord testified that the Tenants have seriously jeopardized the health and safety of the Landlord or other occupants of the property by using the hot tub and not properly maintaining it. The Tenants present denied ever having used the hot tub and stated that only J.A. has ever used it. As a result, they stated that there is no health or safety risk to them. They also stated that there is no health or safety risk to the Landlord as he should not be using the hot tub at their rental property.

Analysis

Based on the testimony and documentary evidence before me, I find that the Tenant J.A. was served with the first One Month Notice, on November 14, 2017.

Section 47 of the *Act* outlines the reasons for which a landlord may serve a notice to end tenancy for cause. Although both parties agree that a One Month Notice was served on the

Tenants because the property is for sale, the sale of rental property is not a ground for ending a tenancy under section 47 of the *Act*. As a result, I order that the One Month Notice dated November 12, 2017, be cancelled and I dismiss the Landlord's claim for an Order of Possession in relation to this One Month Notice without leave to reapply.

Based on the testimony and documentary evidence before me, I find that the Tenants J.A. and B.K. were served with the second One Month Notice on November 29, 2017. Although the Landlord testified that the One Month Notice dated November 28, 2017, applies to all four Tenants, I do not agree. Page one of the One Month Notice only lists J.A. and B.K. and although the Landlord served the One Month Notice along with a schedule of parties listing R.S. and K.W., I find that the schedule of parties is to be used with applications for dispute resolution, not notices to end tenancy.

In the interim decision dated February 20, 2018, I found that the Tenants are tenants in common under three separate tenancy agreements and not co-tenants under one tenancy agreement. As a result, I find that the One Month Notice dated November 28, 2017, naming the Tenants J.A. and B.K. is invalid as I find that the Landlord cannot end separate tenancies under a single One Month Notice. Based on the above, I order that the One Month Notice dated November 28, 2017, be cancelled and the Landlord's claim for an Order of Possession based on the One Month Notice is dismissed without leave to reapply. Based on the above, and given that I previously ordered in the interim decision dated February 20, 2018, that the 10 Day Notice dated November 11, 2017, be cancelled, I order that each of the tenancies continue in full force and effect until they are ended in accordance with the *Act*.

Although the parties provided significant testimony and documentary evidence in relation to the grounds noted for ending the tenancy on the One Month Notice dated November 28, 2017, as I have already found above that the One Month Notice is invalid, I do not find it necessary to make any finding of fact or law in relation to these matters.

As the Landlord was not successful in any of his claims, I decline to grant him recovery of the filing fee. As the Tenants were successful in cancelling the 10 Day Notice, and both One Month Notice's, I find that they are entitled to the recovery of one filing fee pursuant to section 72 of the *Act*. Although the Tenants filed three separate Applications, I find that the Tenants could have simply amended their original application instead of filing two subsequent applications. As a result, I do not find that they are entitled to the recovery of more than one filing fee.

Based on the above, I authorize and order each of the four Tenants to reduce their next month's rent by \$25.00 in recovery of the filing fee, or otherwise recover this amount from the Landlord.

Conclusion

The Landlord's claim for an Order of Possession based on the One Month Notice is dismissed without leave to reapply and I therefore order that each of the tenancies continue until they are 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: March 21, 2018

Residential Tenancy Branch