



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an order for the Landlord to complete emergency repairs and for the recovery of the filing fee paid for this application.

Both Tenants were present for the teleconference hearing as were two agents for the Landlord (the “Landlord”). The Landlord confirmed that they received the Notice of Dispute Resolution Proceeding package in the mail and as such, I find that the Landlord was duly served in accordance with Sections 88 and 89 of the *Act*.

The Landlord stated that they did not receive any documentary evidence from the Tenants. The Tenants stated that they emailed a copy of their evidence to the Landlord and were not sure why the email was not received. The Tenants’ evidence submitted to the Residential Tenancy Branch was reviewed and the Landlord confirmed they did not have the evidence before them, other than a letter written from the Tenants to the Landlord that they had received previously, and which was also included in the Landlord’s evidence package.

The Landlord stated that they sent a copy of their evidence to the Tenants by email on December 5, 2018. The Tenants confirmed receipt of some of the documents but stated that they did not receive a copy of one of the complaint letters from another resident in the rental building.

As the Landlord stated that they did not receive the Tenants’ evidence and in the absence of any proof of service, I cannot determine that the Tenants evidence was

served to the Landlord. I also note that email is not a method of service under Sections 88 or 89 of the *Act*.

As for the Landlord's evidence, despite being sent by email, as the Tenants acknowledged receipt of the email, and that they had reviewed the evidence, I determine that the documents were sufficiently served for the purposes of the *Act*, pursuant to Section 71(2). I also find it likely that if the Tenants received some of the documents from the Landlord's email, that they received the rest of the documents as well. The Landlord submitted a copy of the email into evidence and the email shows attachment names that match the evidence submitted to the Residential Tenancy Branch. As such, I find that the Tenants received the Landlord's full evidence package.

Therefore, the Tenants' evidence will not be included as part of this decision as I do not have proof that it was served to the other party as required in the *Residential Tenancy Branch Rules of Procedure*. This decision will be based on the relevant testimony of both parties and the relevant documentary evidence of the Landlord.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

At the outset of the hearing, the agents for the Landlord clarified the business name of the Landlord. As the Application for Dispute Resolution included both the business name and the name of one of the agents, this was amended to solely the business name of the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Neither party submitted the One Month Notice into evidence. As the One Month Notice is essential to the matter before me, the parties were asked to submit the One Month Notice into evidence following the hearing. The One Month Notice was submitted by the Landlord following the hearing.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement. The tenancy began on May 1, 2009 for a monthly rent of \$950.00. A security deposit of \$475.00 was paid at the outset of the tenancy. Current monthly rent is \$1,127.00 due on the first day of each month.

On November 17, 2018, the Landlord served the Tenants with a One Month Notice by posting it on their door. The One Month Notice states the following as the reasons for issuing the notice:

- 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 or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord

The effective end of tenancy date of the One Month Notice was stated as December 31, 2018.

The Landlord provided testimony regarding an incident that occurred with the Tenants on November 17, 2018, which they stated was the second incident of this nature following an incident that occurred in August 2018.

The Landlord testified that they posted a note on the Tenants' vehicle that was in the parkade with no license plates and no insurance. The Landlord submitted a photo of a sign in the parkade that states that vehicles must have a valid license plate.

The Landlord stated that they also put a note on the Tenants' door regarding the vehicle. Later that same evening the Landlord got a knock on the door from the female Tenant and he said she began yelling and swearing at him after he told her that she had two days to insure the vehicle.

The Landlord stated that he was concerned about her behaviour, especially since there were young children present at the time. After she left, he tried to call her but after she hung up he attended the rental unit in person. The Landlord stated that the male Tenant came to the door and the Landlord thought that the Tenant was going to hit him as he clenched his fist and then hit the wall beside him.

The Landlord testified that they called the police and the police attended the rental unit, although no charges were laid. The Landlord submitted into evidence an incident report from that evening that was written by the agent for the Landlord, as well as a police file number.

The Landlord stated that they are concerned about the aggressive nature of the Tenants and the risk to the Landlord and other occupants of the rental building. They submitted into evidence an undated text message from another resident in the building which states that they were witness to the events of November 17, 2018 and witnessed the Tenant clench his fist and hit the wall. The text message further stated that the Tenant appeared aggressive towards the Landlord. The text message is unsigned and undated, but the Landlord stated that they received it on November 19, 2018 and noted which rental unit it was from.

The Landlord also submitted into evidence a letter dated November 23, 2018 from another resident in the building, stating that on November 17, 2018 they witnessed the Tenant yelling and swearing at the Landlord and telling him that everyone hates him.

Also included in the Landlord's evidence package was a warning letter to the Tenants dated December 10, 2018 in which they asked the Tenants to stop knocking on the doors of other residents. The Landlord stated that the Tenants were knocking on the doors of the residents who provided witness statements for this hearing.

The Landlord also submitted a letter from the Tenants dated November 18, 2018 in which the Tenants state that they will contact the police if the Landlord harasses them again. In the letter, the Tenants request that the Landlord only communicate with them through written communication.

The Tenants provided testimony that they insured the car the next day after hearing from the Landlord and provided the Landlord with a copy of the insurance. The male tenant further testified that he did attempt to hit the agent for the Landlord or hit the wall and that he has never behaved in such a manner. The Tenant further testified that the Landlord yells at them often which is what happened on November 17, 2018, when he came to the door to yell at the female Tenant.

The Tenants stated that when the Landlord came to their door, he never even left the area of the doorframe and never threatened anyone or became physical. The Tenant stated that this began when the Landlord approached one of the Tenants regarding the car and started yelling at her about the insurance. The Tenants stated that later that same day, the agent for the Landlord attended the rental unit to start another fight regarding the insurance issue. The Tenant stated that he is not sure who in the building would be fearful of them, and that the issue is with the management, not with them.

The Tenants also applied for an Order for the Landlord to complete emergency repairs. They provided testimony that there are things in the rental unit that are aging and require repairs, but they cannot talk to the manager about the issues as he does not listen to them.

The Tenants further submitted that the bathroom is leaking, and water is flowing continually, causing potential risk to moisture in the walls. The Tenants stated that anytime they have talked to the Landlord about repairs they are told that they need to put it in writing. They also stated that the Landlord does not come to the rental unit to look at issues when notified of repairs that are needed.

The Tenants also stated that there were rodents in the building and although the rodent issue has been resolved, the rodents caused damage to some items in the rental unit, such as through chewing on the cabinets.

The Landlord stated that they have asked the Tenants to put any requests for repairs in writing and that they were not aware of any issues of water leaking in the bathroom until the hearing. The Landlord also stated that they have pest control attend the building regularly.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the notice was served on the Tenants' door on November 17, 2018, and the Tenants applied for Dispute Resolution on November 22, 2018, I find that they applied within the timeframe provided by the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

The parties provided conflicting testimony regarding the events that occurred on November 17, 2018 that led the Landlord to serve the Tenants with a One Month Notice. The Landlord stated that the Tenants yelled and swore at him and that one of the Tenants clenched his fist and hit the wall. The Tenants stated that this did not happen and that they did not yell or hit anything, but that the Landlord was yelling at them.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for ending the tenancy are valid.

The Landlord submitted an incident report from the date of the incident written by the agent for the Landlord who was present at the time. The incident report reiterates that testimony of the agents who were present at the hearing and therefore does not provide further information as to what occurred.

The Landlord also submitted a warning letter to the Tenants, dated December 10, 2018. However, as this letter was provided to the Tenants after the service of the One Month Notice regarding events that occurred since the One Month Notice, I do not find it to establish whether the Landlord had cause to end the tenancy.

One of the witness statements submitted by the Landlord states that the Tenant was aggressive and attempted to hit the Landlord, instead hitting the wall. A second witness statement notes that the Tenant was witnessed yelling and swearing at the Landlord but does not mention any physical violence.

The One Month Notice states that the Tenant has engaged in illegal activity that is causing risk to other and to the property, pursuant to Section 47(1)(e) of the *Act*. The

Landlord provided testimony regarding the Tenant threatening to hit him and instead hitting the wall. However, I do not the text message from another resident stating that the Tenant hit the wall to be sufficient evidence to establish that the Tenant engaged in illegal activity and that that illegal activity is causing risk to the property or to others.

The Landlord stated that the police were called and attended the rental unit, but police attendance does not prove illegal activity without further evidence. As such, I find that the Landlord did not provide sufficient evidence to meet the burden of proof to establish that the tenancy should end due to risk caused by illegal activity.

The other reasons noted on the One Month Notice were regarding the Tenants significantly interfering with or unreasonably disturbing others, seriously jeopardizing the health and safety of others and putting the landlord's property at significant risk, pursuant to Section 47(1)(d) of the *Act*.

From the testimony of both parties and from the Landlord's evidence, it seems that the parties were involved in a disagreement on November 17, 2018, that perhaps escalated more than either party expected. However, I do not find sufficient evidence before me to establish the events that occurred on November 17, 2018 and that the events caused *significant* interference or *seriously* jeopardized the health, safety of lawful right of others in the rental building.

Although the Landlord testified as to a previous event that occurred in August 2018, there was no further information provided on this event that may have established a pattern of behaviour that is causing significant disturbance to others.

The Landlord testified as to the Tenant hitting the wall in the rental building, which was also stated in the text message from another resident in the building. However, I do not find sufficient evidence for me to determine that this occurred or that this put the Landlord's property at *significant* risk.

As such, I do not find that the Landlord met the burden of proof to prove, on a balance of probabilities, that the reasons for ending the tenancy with the One Month Notice are valid. Accordingly, the One Month Notice dated November 17, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenants' request for emergency repairs, I refer to Section 33(1) of the *Act* which provides a definition of emergency repairs as follows:

- 33 (1) In this section, "emergency repairs" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the *Act* outlines a process for completing emergency repairs as follows:

- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

As this was the Tenant's claim, they have the onus to establish their claim, on a balance of probabilities. Although the Tenants testified as to water leaking in the bathroom, and damage caused by rodents in the rental unit, I find insufficient evidence to establish that this fits the definition of an emergency repair as noted above.

I also am not satisfied that the proper process for the completion of emergency repairs was followed and that the Landlord has not made emergency repairs after they were notified of such. Therefore, I find that no orders are necessary regarding emergency repairs. The Tenants' application for emergency repairs is dismissed, without leave to reapply.

As the Tenants were successful in their application to cancel the One Month Notice, I find that they are entitled to the recovery of the filing fee in the amount of \$100.00,

pursuant to Section 72 of the *Act*. The Tenants may deduct this amount from their next monthly rent payment.

Conclusion

The One Month Notice dated November 17, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenants' application for emergency repairs is dismissed, without leave to reapply.

Pursuant to Section 72 of the *Act*, as recovery of the filing fee the Tenants may deduct \$100.00 from their next monthly rent payment.

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 19, 2018

Residential Tenancy Branch