



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDCT, MNSD, MT, OLC, RP (Tenant)
ET, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application on November 7, 2018 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause;
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;
- Seeking more time to file the disputes;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For repairs to be made to the unit.

The Tenants filed an amendment to the Tenants’ Application November 23, 2018. The Tenants added a monetary claim for \$2,350.00.

The Landlord filed her application November 9, 2018 (the “Landlord’s Application”). The Landlord sought an Order of Possession based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord filed an amendment to the Landlord’s Application on November 16, 2018. The Landlord sought the following in the amendment:

- An Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;

- An Order of Possession based on a One Month Notice to End Tenancy for Cause;
- To recover unpaid rent and utilities; and
- To keep the security and pet deposit towards unpaid rent and damage to the property.

This matter came before me for a hearing December 7, 2018 at which time it was adjourned to December 11, 2018. An Interim Decision was issued December 7, 2018. This decision should be read with the Interim Decision.

The Tenants and Landlord appeared at the hearing. The Landlord called a witness during the hearing.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence at both hearings.

The Landlord advised that she had not received a hearing package for the Tenants' Application. She said she found out about the Tenants' Application from the Residential Tenancy Branch (RTB) on November 16, 2018. The Landlord confirmed she was fine with proceeding in the circumstances.

The Landlord advised that she had not received the Tenants' evidence. The Tenants testified that the evidence was dropped off to the Landlord's husband at the Landlord's residence on November 22, 2018. The Landlord advised that her husband had not received this. The Tenants had not submitted evidence of service. I was not satisfied of service given the conflicting evidence and lack of evidence to support the Tenants' testimony. I heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence as I found it would be unfair to consider it when I was not satisfied of service.

The Tenants advised that they received the hearing package for the Landlord's Application three days before the hearing. The Landlord testified that she sent the packages November 16, 2018 by registered mail. The Landlord had submitted evidence in relation to this including the tracking numbers for the packages which are noted on the front page of this decision. I looked these up on the Canada Post website which show the packages were delivered and signed for December 2, 2018. The Tenants said they did not have time to prepare to address the Landlord's Application given the date they received the hearing packages.

It is clear from the Canada Post website that the delivery of the hearing packages was delayed due to the strike. During the strike, the RTB website stated as follows:

Canada Post Labour Dispute: Serving Documents

Serving Documents to Other Parties

During the Canada Post labour dispute, **you should use other methods of service.** Arbitrators may determine that the documents sent by mail were not sufficiently served and dismiss any related applications for dispute resolution, with or without leave to reapply...

[emphasis added]

Section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure (the “Rules”) require applications for dispute resolution to be served within three days of the application being made.

Here, the Tenants received the hearing packages five days before the hearing. I accepted the position of the Tenants that they did not have sufficient time to prepare to address the Landlord’s Application in the circumstances. I did not find five-days notice of an application for dispute resolution to be sufficient. I therefore declined to address the Landlord’s Application other than the issues also raised in the Tenants’ Application. The following issues from the Landlord’s Application are dismissed with leave to re-apply:

- The request for an Order of Possession based on section 56 of the *Act*;
- The request to recover unpaid rent and utilities; and
- The request to keep the security and pet deposit towards unpaid rent and damage to the property.

This decision does not extend any time limits set out in the *Act*.

The Tenants advised that they did not receive the Landlord’s evidence. The Landlord said this was included in the same packages as the hearing packages. The Landlord had submitted a witness statement indicating the author witnessed the Landlord serve the Tenants with the second set of evidence submitted between November 17 and November 22, 2018. The Landlord could not point to any other evidence submitted in

relation to her evidence being served on the Tenants. The witness statement says two packages of evidence were served on the female Tenant in person at the rental unit on November 22, 2018. The Tenants denied receiving these packages.

The second set of evidence contained digital evidence. The Landlord advised she did not confirm with the Tenants that they could view the digital evidence.

I accept that the second set of evidence submitted was served on the Tenants as set out in the witness statement. I do not accept that the Tenants did not receive this. I am satisfied of service and admit the evidence submitted between November 17 and November 22, 2018. I do not admit the remaining evidence of the Landlord as the parties gave conflicting testimony about whether it was served or received and the Landlord provided no evidence to support her position. I am not satisfied of service in relation to the remaining evidence and find it would be unfair to admit it when the Tenants say they did not receive it.

Rule 3.10.5 of the Rules states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

I was not satisfied that the Landlord complied with rule 3.10.5 of the Rules. I therefore excluded the digital evidence submitted between November 17 and November 22, 2018 as it was my view it would be unfair to the Tenants to admit it when the Landlord did not confirm that they could view it as required.

Rule 2.3 of the Rules requires matters to be related to each other in an Application for Dispute Resolution. I told the Tenants I would only consider the following from the Tenants' Application:

- The dispute of a One Month Notice to End Tenancy for Cause;
- The dispute of a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;

The Tenants advised that the request for more time to file was a mistake. I have not considered this issue and dismiss this request without leave to re-apply.

I did not consider the following from the Tenants' Application as these issues are not sufficiently related to the main issues before me being the dispute of the notices to end tenancy:

- The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- The request for repairs to be made to the unit; and
- The monetary claim for \$2,350.00.

These issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
3. Should the One Month Notice be cancelled?
4. If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started September 22, 2018 and

is for a fixed term of one year. Rent is \$1,450.00 per month due on the first day of each month.

10 Day Notice

Two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities had been submitted as evidence, one dated November 1, 2018 and one dated November 2, 2018. The Landlord said she did not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2018. I therefore did not consider this notice.

The Landlord testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018 (the "10 Day Notice") on the Tenants in person on November 2, 2018.

The Tenants testified that they did not receive the 10 Day Notice and only received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2018.

There is no admissible evidence before me from the Landlord in relation to service of the 10 Day Notice.

One Month Notice

The Landlord testified that she served both pages of the One Month Notice on the Tenants in person October 30, 2018. The Tenants said they received the One Month Notice November 1, 2018.

The One Month Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of November 30, 2018. The grounds for the One Month Notice are as follows:

1. Tenants are repeatedly late paying rent.
2. Tenants or a person permitted on the property by the Tenants have (i) significantly interfered with or unreasonably disturbed another occupant or the Landlord (ii) seriously jeopardized the health or safety or lawful right of another occupant or the Landlord (iii) put the Landlord's property at significant risk.

3. Tenants or a person permitted on the property by the Tenants have engaged in illegal activity.
4. Tenants have not done required repairs of damage to the unit.
5. Breach of a material term of the tenancy agreement.

In relation to ground 1, I note that the tenancy started September 22, 2018 and the One Month Notice is dated October 30, 2018. The Landlord said she considered November rent to be late when the One Month Notice was issued.

In relation to ground 2, the Landlord testified as follows. The Tenants have been disrespectful since they moved in both to the Landlord and the tenants in her basement. Her neighbours have been disturbed by the Tenants. The police have visited the property because of the Tenants.

The Landlord further testified as follows. The first visit by a bylaw officer occurred October 5, 2018. The bylaw officer asked to speak to the Tenants because neighbours had complained. The Landlord spoke to the Tenants about the bylaw officer visit and gave them a letter from the bylaw officer. The violation was loud noise and their dog barking.

The Landlord further testified as follows. The Tenants leave their dog unsupervised and unleashed. She has texted the Tenants telling them to supervise their dog and put a leash on their dog. The Tenants say the dog is friendly; however, the Landlord does not believe this is sufficient and wants to prevent anything from happening. This is a safety issue. Further, the Tenants leave dog feces outside the rental unit on the ground.

The Landlord testified that an issue with the dryer in the rental unit arose and she scheduled an appointment with the repair person to come look at it. She said she provided the Tenants with 24 hours notice to enter the rental unit. The Landlord said the Tenants refused entry and so the repair person cancelled. She said this is a breach of her right to monthly inspections as outlined in the tenancy agreement.

The Landlord testified that on October 25, 2018, at 10:30 p.m., two RCMP officers attended her residence looking for the Tenants. She said the officers attended the rental unit and said they needed to take the Tenants to the detachment. The Landlord said this was concerning as she has two children. She also said this is humiliating. The

Landlord testified that the police attend at random times due to noise complaints from neighbours. She said there was only one time the police attended because she called them and that she did so because her children could not sleep as the Tenants were being inconsiderate.

The Landlord testified that the Tenants disturb the tenants in her basement suite. She said one of the tenants is almost a senior and works six to seven days per week. She said he cannot sleep and is woken up by noise from the Tenants. The Landlord testified that the tenant is also concerned about the Tenants' dog because the dog growls at him.

The Landlord testified that she runs a daycare and that she lost two clients because of the Tenants. She said the children in the daycare cannot access the backyard because it is not safe due to the Tenants. The Landlord testified that this relates to the Tenants playing music with swearing. She said she cannot take the daycare children out into the yard because she does not want them going home and swearing. The Landlord testified that the second concern relates to the Tenants' dog. She said the issue is that the Tenants leave the dog out unsupervised and leave dog feces around.

The Landlord testified that her neighbour is moving because of the noise from the Tenants.

In relation to ground 3, the Landlord acknowledged that she could not prove the Tenants have engaged in illegal activity.

In relation to ground 4, the Landlord said the issue is the dryer. The Landlord testified that the Tenants were asked to repair the dryer. She then said the Tenants replaced the dryer without her knowledge. The Landlord then said the Tenants insisted that she fix the dryer. The Landlord said the Tenants were not given a deadline for fixing the dryer.

In relation to ground 5, the Landlord submitted that the Tenants are breaching terms 5, 8, 10, 12, 13, 14, 23, 26, 27, 29 and 31 of the tenancy agreement. I asked the Landlord if she provided the Tenants with written notice that they were breaching material terms of the tenancy agreement with a deadline to address the issues. She said she always informs them in person, by text and by email. She said she told the Tenants the issues raised were breaches of the contract. She acknowledged that she may not have provided a deadline for addressing the issues. The Landlord read out an example of

one of her texts. The text said nothing about the issue raised being a breach of a material term of the tenancy agreement.

The Landlord provided further details of the tenancy without explaining how they are relevant to the One Month Notice. I have not included these details here as it is not apparent to me how they are relevant to the One Month Notice.

The Tenants testified that Tenant A.G. makes music and that they told the Landlord this. The Tenants said the music is not vulgar and does not have words. The Tenants said the Landlord cut off their internet and therefore they do not have a way to play other music. The Tenants said Tenant A.G. is not making music in the middle of the night. The Tenants testified that they are not playing music all day and night as claimed. The Tenants said they are not partying or screaming.

The Tenants acknowledged that the police attended the rental unit once for a noise complaint and said the police asked them to turn the music down. The Tenants said this is the only time they have heard anything about causing a nuisance.

Tenant A.G. testified that he asked the neighbour if he had any issue with the music and the neighbour was fine with it. Tenant A.G. said he told the neighbour to let him know if there was an issue.

The Tenants testified that they were never told by the Landlord that there was an issue with noise.

The Tenants denied that their dog barks. The Tenants said they do not believe the bylaw letter about the dog barking was in relation to their dog. The Tenants denied that they leave dog feces in the yard.

In relation to the Landlord's testimony about the daycare children not being able to play outside, the Tenants explained that their yard is fenced with a locked gate. The Tenants said there is no way the issues described by the Landlord in relation to their dog in the yard are issues in the circumstances.

In relation to the Landlord entering the rental unit, the Tenants said they understood that the Landlord could enter the rental unit with proper notice whether the Tenants are home or not. The Tenants said the issue with the Landlord entering for the repair person was that the Landlord did not give them 24 hours notice that she was entering.

The Tenants said the Landlord waited until they were away and told them she was entering that day.

The Tenants denied that the Landlord ever gave them written notice to fix the dryer.

The Tenants denied that the Landlord ever provided them written notice that they were breaching material terms of the tenancy agreement with a deadline for addressing the issues.

The Landlord had wanted to call witnesses at the hearing. The first hearing for this matter lasted one hour and 48 minutes. At the second hearing, the parties took one and a half hours to complete their submissions. I asked the Landlord how many witnesses she intended to call and she indicated four witnesses. It was determined that one of these witnesses was not necessary because her evidence related to the presence of the daycare which the Tenants were not disputing. I told the Landlord I was willing to extend the hearing by a further half an hour but not beyond that. I told the Landlord that after a further half an hour, the matter would have to be adjourned if she still wished to call witnesses.

I attempted to call the first witness for the Landlord; however, the call went to voicemail.

I attempted to call the second witness for the Landlord; however, the call went to voicemail.

I called in the third witness for the Landlord. The witness testified that the Tenants have loud music going when he leaves for work at 5:00 a.m. He said that when he returns in the afternoon, he hears loud music sounds from the rental unit. The witness testified that sometimes he cannot sleep because of the loud sounds and music. He also said the Tenants' dog barks and that he is scared of it. The witness testified that the Tenants dog is unleashed. He said the dog scares him because he was bitten by a different dog in the past. The witness testified that the Tenants' dog is a big dog.

The Tenants raised the issue of who the witness was. I clarified this with the Landlord who said the witness is her father and that he lives in her basement suite.

By the time the witness was finished, the hearing had been going for almost two hours. The Landlord asked if I could try calling the other witnesses again. I told the Landlord we would have to adjourn if she wanted to call the other witnesses again as we could

not continue the hearing past two hours. I gave the Landlord the option to adjourn to hear from the other witnesses or to conclude the hearing and have a decision based on the evidence presented. The Landlord did not want to adjourn the hearing and agreed to conclude the hearing and have a decision based on the evidence presented.

The only admissible evidence before me from the Landlord is the following:

1. Summary labelled "DETAILS ON IMMEDIATE SAFETY ISSUES"
2. Letter dated November 19, 2018 from the tenant in the basement suite of the Landlord's house on the property
3. Letter dated November 19, 2018 from the daycare manager
4. Letter dated November 20, 2018 from a neighbour

The letters address noise issues with the Tenants and issues with the Tenants' dog.

Analysis

10 Day Notice

The Landlord has the onus to prove she is entitled to an Order of Possession based on the 10 Day Notice.

The Landlord testified that she served the 10 Day Notice on the Tenants on November 2, 2018. The Tenants testified that they never received the 10 Day Notice. There is no admissible evidence before me showing the 10 Day Notice was served on the Tenants. In the circumstances, the Landlord has failed to prove service of the 10 Day Notice and therefore I decline to issue an Order of Possession based on the 10 Day Notice.

One Month Notice

The Landlord was permitted to serve the One Month Notice based on the grounds noted pursuant to section 47 of the *Act*. The Tenants had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

The parties gave conflicting evidence about when the One Month Notice was served. I do not find the discrepancy relevant. Whether the One Month Notice was served October 30, 2018 or November 1, 2018, the Tenants disputed the One Month Notice November 7, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

In relation to ground 1, the One Month Notice was dated October 30, 2018 and according to the Landlord was served on the Tenants October 30, 2018. As of October 30, 2018, the Tenants had only been in the rental unit for September and October and therefore could only have been late paying rent twice. The Landlord said she took into account November rent; however, in my view the Landlord cannot issue a notice to end tenancy based on grounds she believes will materialize in the future. I do not consider two late payments of rent sufficient to show the Tenants are repeatedly late paying rent. I do not find this ground valid.

I note that I am not making a decision about whether the Tenants did in fact pay rent late in September and October as it is not necessary to do so. Even if the Tenants did pay rent late for September and October, this is not sufficient to uphold the One Month Notice based on ground 1.

In relation to ground 2, the Landlord provided a long list of issues she has had with the Tenants. The Tenants denied that these were issues. The only admissible evidence before me in relation to the issues raised are the three letters noted above. I also heard from the Landlord's witness in relation to the noise issue and dog issue.

The letters and witness addressed the noise issue and dog issue. The Tenants testified that the Landlord never told them there was a noise issue. There is no admissible evidence before me showing that the Landlord did tell the Tenants there was a noise issue. I am not satisfied that the Tenants were sufficiently notified of an ongoing noise issue and decline to uphold the One Month Notice based on the noise issue.

In relation to the dog issue, I understand the issue to be that the dog is unsupervised and unleashed on the property. The Landlord and witnesses raise safety concerns in relation to the dog; however, they appear to have concluded that the dog poses a safety risk without any evidence to support this conclusion. It may be that the Tenants allow the dog to roam the property unsupervised and without a leash; however, I am not satisfied that this meets the standard for ending a tenancy as outlined in ground 2 of the One Month Notice.

None of the remaining issues noted by the Landlord are supported by the admissible evidence and therefore I decline to uphold the One Month Notice based on the remaining issues raised.

In relation to ground 3, the Landlord acknowledged that she could not prove this ground.

In relation to ground 4, the Landlord said this relates to the dryer. The Landlord said she asked the Tenants to fix the dryer. The Landlord also testified that she had arranged for a repair person to attend and look at the dryer and the Tenants would not allow the Landlord into the rental unit. This does not accord with the Landlord asking the Tenants to fix the dryer. If she had done so, it does not make sense that she would have arranged for someone to look at the dryer. The Tenants denied that the Landlord ever gave them written notice to fix the dryer. There is no admissible evidence before me that the Landlord ever asked the Tenants to fix the dryer. In the circumstances, I am not satisfied that the Landlord did so. I decline to uphold the One Month Notice based on this ground when I am not satisfied that the Tenants were asked to fix the dryer.

In relation to ground 5, the relevant section of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[emphasis added]

Policy Guideline 8 addresses ending a tenancy for breach of a material term and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – **must inform the other party in writing:**

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

[emphasis added]

The Landlord listed 11 terms of the tenancy agreement that she said the Tenants have breached. When asked if she had provided the Tenants with written notice about these issues indicating they are breaches of material terms of the tenancy agreement, the Landlord said she did. When asked about this further, the Landlord read out a text message she had sent to the Tenants; however, the text message said nothing about the Tenants breaching a material term of the tenancy agreement. The Tenants denied that the Landlord ever gave them written notice that they were breaching material terms of the tenancy agreement. There is no admissible evidence before me that the Landlord provided the Tenants with such notice. I decline to uphold the One Month Notice based on this ground in the absence of evidence that the Tenants were notified of the issues raised.

Given the above, I find the Landlord has failed to prove the grounds outlined in the One Month Notice. The One Month Notice is therefore cancelled.

Summary

I decline to issue the Landlord an Order of Possession based on the 10 Day Notice as the Landlord failed to prove the 10 Day Notice was served on the Tenants.

The One Month Notice is cancelled as the Landlord failed to prove the grounds for the One Month Notice.

The tenancy will continue until ended in accordance with the *Act*.

Given the Landlord was not successful, I decline to award her reimbursement for the filing fee.

Conclusion

I decline to issue the Landlord an Order of Possession based on the 10 Day Notice as the Landlord failed to prove the 10 Day Notice was served on the Tenants.

The One Month Notice is cancelled as the Landlord failed to prove the grounds for the One Month Notice.

The tenancy will continue until ended in accordance with the *Act*.

Given the Landlord was not successful, I decline to award her reimbursement for the filing fee.

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

Dated: December 18, 2018

Residential Tenancy Branch