



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FFT

Introduction

This teleconference hearing was scheduled in response to an application filed by the Tenants under the *Residential Tenancy Act* (the “Act”) on September 6, 2019 for an order for the completion of emergency repairs, and for the recovery of the filing fee paid for the Application for Dispute Resolution. On October 4, 2019 the Tenants filed an amendment to add a claim to dispute a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Both Tenants and the Landlord were present for the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, a copy of the amendment form, and a copy of some of the Tenants’ evidence. The Landlord stated that she received a package with 5 pages of photos and that no additional evidence was received. The Tenants confirmed receipt of the Landlord’s evidence and stated that they served the Landlord with their evidence by posting it on her door. They stated that it was not posted in one package, but in several packages since their application was filed.

However, in the absence of proof of service documentation from the Tenants, I am not satisfied that their entire evidence package was served to the Landlord in accordance with the *Residential Tenancy Branch Rules of Procedure*. Therefore, the Tenants’ evidence is not accepted and will not be considered in this decision, with the exception of the photos that the Landlord confirmed receipt of. Neither party brought up any additional issues regarding service.

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.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

At the hearing, the spelling of the Landlord's name was clarified. As this was different than the spelling of her name as stated on the Application for Dispute Resolution, the application was amended to the spelling as stated by the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

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

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by a copy of the tenancy agreement which was submitted into evidence. The tenancy started on August 1, 2019. Rent in the amount of \$1,450.00 is due on the first day of each month and a security deposit of \$725.00 was paid at the start of the tenancy.

The Landlord testified that the Tenants were served with the One Month Notice on September 27, 2019 when she posted the notice on the Tenants' door. A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord

Further details were provided on the One Month Notice as follows:

Tenants made changes to landscaping without permission, Sept 2/19 then conducted a month long campaign of harassment, calling RCMP, rental tenancy, SPCA, animal control and perhaps others, screamed obscenities outside landlords house, disturbing a tenant, threatening

The Landlord stated that the tenancy began going downhill at the beginning of September 2019. She stated that the Tenants are impossible to negotiate with and that they were arguing with her about repairs needed in the rental unit. The Landlord noted that the Tenants had agreed to complete some repairs in the rental unit.

The Landlord stated that after the Tenants brought forth concerns regarding rats in the rental unit, she attended the unit with traps and rodent control spray on September 2, 2019. The Landlord stated that this is when the Tenants notified her that they had made changes in the shared garden area and the Landlord found out that they had ripped out the plastic and left it in a pile at the side of the lawn and that the Tenants also got rid of plastic bags of manure from the garden. The Landlord stated that the Tenants had told her that the plastic was a danger to their dog, but the Landlord noted that the Tenants had no permission to make changes in the garden.

The Landlord stated that she also found out that the Tenant had cut off tree branches on the property and changed the landscaping which was against the tenancy agreement. The Landlord referenced the tenancy agreement addendum that was submitted into evidence and notes that it was delivered on September 6, 2019. Regarding the yard and garden, the addendum indicates that the Tenants are not to make changes to the home or yard without the Landlord's permission. A draft of the addendum was also submitted. The Landlord also submitted photos of the yard.

The Landlord stated that one of the Tenants showed up at her door screaming and crying about repairs which the Landlord advised the Tenant to put into writing. The Landlord noted that the Tenants had not completed the repairs they had promised to complete themselves. She stated that the Tenant was so upset that she was worried that her roommate would be attacked. The Landlord also noted that the Tenant was yelling obscenities at her home as she walked away and called the Landlord an inappropriate name.

The Landlord also testified that the Tenants called the RCMP who attended her home and stated that the Landlord had threatened to shoot the Tenants' dog.

The Landlord testified that around September 9, 2019 she received a list of repairs for the rental unit, much of which the Tenants had previously agreed to complete. She also stated that the Tenants were not maintaining the rodent traps.

The Tenants were in agreement that they cut some branches from trees on the property but stated that the branches were dead. The Tenants later noted that they had realized that some of the branches were not fully dead as they pulled them out and apologized for this. The Tenants also stated that they were not aware that manure was in the garbage bags and that their dog was trying to eat the plastic on the garden. They stated that they were trying to prevent damage to the home such as through removal of the dead branches.

The Tenants stated that they have never yelled at the Landlord or yelled outside of the Landlord's door. The Tenants also denied any threats towards the Landlord. They noted that they had to call the RCMP but stated that they don't know who called the SPCA or animal control.

The Landlord included in evidence a written submission outlining the events that have occurred during the tenancy. She also referenced a letter from her roommate that was submitted into evidence. The undated letter notes in part that the roommate witnessed one of the Tenant's shouting obscenities at the Landlord and accusing the Landlord of wanting to shoot the Tenants' dog.

Regarding the Tenants' claim for emergency repairs, the Tenants stated that the counter in the kitchen needs replacing and that the tile around the wood stove is broken and needs one new tile. They stated that there were additional repairs needed, but they have either been completed or are not urgent at the moment.

The Tenants stated that the Landlord was notified of the need for repairs when the Condition Inspection Report was conducted at the start of the tenancy. They also noted that they have tried to be available for the Landlord to attend the rental unit for repairs as needed.

The Landlord stated that issues with the kitchen sink are not an emergency. She also noted that the Tenants' list of requested repairs does not match their testimony about

repairs needed. The Landlord further testified that she believes the issue with the sink is just the area on the back and that she has the materials to fix this. The Landlord testified that the Tenants' complaints about repairs are further evidence of their harassment towards her. The Landlord stated that her biggest concern is rats in the rental unit and that she wants access to deal with the issue. She stated that the Tenants have been unaccommodating in allowing access when she had provided notice to enter the rental unit.

In the letter written by the Landlord's roommate, the roommate writes that he was assisting the Landlord in completion of the repairs and that they had "a great deal of trouble gaining access to the house". The roommate further notes that the Tenant provided few dates and times of availability or were not available when they said they would be. The Landlord also submitted into evidence multiple letters to the Tenants regarding access to the rental unit for repairs and regarding concerns between the parties, as well as letters from the Tenants.

The Tenants submitted four photos of the kitchen to show the areas in need of repairs. This included a photo of what is indicated as a crack behind the sink, a photo showing an area around the faucet and sink which the Tenants indicated needs grout, a photo of the area underneath the sink, and a photo of the entire kitchen sink.

The Tenants also submitted photos of various areas of the rental unit including flooring, the kitchen, bathroom and other areas throughout the rental unit.

Analysis

Upon consideration of the relevant testimony and evidence of both parties, I find as follows:

I accept the Landlord's testimony that the One Month Notice was posted on the Tenants' door on September 27, 2019. As stated in Section 47(4) of the *Act*, a tenant has 10 days to dispute a One Month Notice. As the Tenants filed the amendment form to dispute the One Month Notice on October 4, 2019, I find that they applied within the 10 days allowable under the *Act*.

Therefore, the matter before me is whether the One Month Notice is valid. As stated by rule 6.6 of the *Residential Tenancy Branch 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 the notice are valid.

The Landlord issued the One Month Notice pursuant to Section 47(1)(d)(i) as follows:

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

The One Month Notice references concerns regarding the Tenants changing the landscaping without permission, concerns of harassment (including calls to the Residential Tenancy Branch, RCMP, SPCA and animal control), screaming and threatening, and disturbance to other tenants.

Regarding the concerns about landscaping, the Tenants admitting that they may have removed some branches that they thought were dead and that they removed the plastic bags of manure as well as the plastic on the garden due to concern for their dog. While the Tenants should not have done so without permission from the Landlord, I do not find this to be a significant interference or unreasonable disturbance and instead find that the issue seems to have resolved after the Landlord expressed her concern.

I also note that it seems that the issues with the garden and yard occurred on September 2, 2019, prior to the completion of the tenancy agreement addendum on September 6, 2019 which provides further details on the responsibilities and restrictions for the residential property. Therefore, the Tenants may not have been aware of the Landlord's rules regarding the yard and garden and have since been notified. I do not find that this issue was significant enough to be a valid reason for ending the tenancy and instead find that the issue was resolved through a discussion between the parties and the development of the tenancy agreement addendum.

Regarding the Landlord's concerns of harassment, the Landlord referenced the Tenants calling the RCMP, the Residential Tenancy Branch, the SPCA and animal control. Although the Tenants denied calling the SPCA or animal control, regardless of whether the Tenants made any or all of these calls, I find that they have the right to do so, just as the Landlord does. I do not find sufficient evidence to establish that the Tenants are making multiple false reports due to an attempt to harass or intimidate the Landlord and that doing so is causing significant or serious disturbance to the Landlord. As such, I do not find the Landlord's claims of harassment to be a valid reason for ending the tenancy.

The Tenants also denied yelling or swearing at the Landlord. I accept that some kind of confrontation likely occurred between the parties, given the testimony of both parties and the witness letter from the Landlord's roommate. However, I do not find sufficient evidence to establish the seriousness of this one incident and do not find that this meets the level needed to end the tenancy for disturbance. Instead, I find that the Tenants have been sufficiently warned regarding their behaviour towards the Landlord and should be cautioned that any further such disturbances may lead to the finding that significant disturbance is occurring.

I am also not satisfied that the Tenants are significantly disturbing other tenants or threatening others. The witness letter from the Landlord's roommate indicates that he was witness to the Tenants yelling at the Landlord and that he has also been disturbed by attending the rental unit for completion of repairs only to be turned away. Again, I do not find that this meets the level of significance that would lead to a valid reason for ending the tenancy with the One Month Notice.

While it was evident from the hearing that the parties do not get along, I do not find sufficient evidence for me to be satisfied that the Landlord has met the burden of proof regarding the reasons for the One Month Notice. While it seems that some of the incidents that have occurred have been disturbing and caused concern for both parties, I do not find that the issues are significant and serious such that the tenancy should end through the One Month Notice.

As such, the One Month Notice dated September 27, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Tenants' application for emergency repairs, I refer to Section 33(1) of the *Act* which defines 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.

Based on the testimony and evidence of the Tenants regarding the repairs needed in the rental unit, I do not find that any of the repairs mentioned would fall under the definition of emergency repairs. Furthermore, I find that I do not have sufficient evidence before me to order the Landlord to complete regular repairs, such as evidence to establish that the Landlord was sufficiently notified of the need for repairs and that the Landlord was provided reasonable access after notice to enter the rental unit.

The Landlord submitted testimony and evidence regarding the difficulty in obtaining access to the rental unit to conduct repairs. However, I find that the parties seemed to be in agreement that some non-emergency repairs are needed and therefore I remind the parties of their responsibilities under Section 32 of the *Act* and the process for the Landlord to enter the rental unit in accordance with Section 29 of the *Act*. If proper notice to enter is provided in accordance with the *Act*, the Tenants must not unreasonably restrict access.

As I do not find that the Tenants met the burden of proof regarding the need for emergency repairs in the rental unit, their application for emergency repairs is dismissed, without leave to reapply.

As the Tenants were successful with their application to cancel the One Month Notice, pursuant to Section 72 of the *Act* I award the Tenants the recovery of the filing fee paid for the application. The Tenants may deduct \$100.00 from their next monthly rent payment as full satisfaction of the amount owed.

Conclusion

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

The One Month Notice dated September 27, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, I grant the Tenants the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as satisfaction of this amount.

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 20, 2019

Residential Tenancy Branch