



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, PSF, FFT, LRE, MNDCT, OLC, CNC

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution filed by the Tenants on January 02, 2020 (the "Application"). The Tenants applied as follows:

- To reduce rent for repairs, services or facilities agreed upon but not provided;
- For the Landlord to provide services or facilities required by the tenancy agreement or law;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For compensation for monetary loss or other money owed;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- To dispute a One Month Notice to End Tenancy for Cause; and
- For reimbursement for the filing fee.

This matter came before me on March 05, 2020 and an Interim Decision was issued the same date. This decision should be read with the Interim Decision.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with the Witness. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

Further to the Interim Decision, the admissible evidence before me includes the 91 page package submitted by the Landlord and the Tenants' evidence, other than two videos that were served on the Landlord on a USB. This has been addressed in the Interim Decision.

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

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2019 and is for a fixed term ending September 30, 2020. Rent is \$3,500.00 per month due on the first day of each month. The Tenants paid a \$1,750.00 security deposit and \$1,750.00 pet damage deposit.

The parties disagreed about whether there is an addendum to the tenancy agreement.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. Put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord attached a letter to the Notice regarding the grounds for it which can be summarized as follows:

- The Tenants have constantly emailed and sent text messages demanding multiple items be replaced. The messages are abusive. This significantly interfered with and disturbed the Landlord and trades people.
- The Tenants have seriously jeopardized the health or safety or lawful right of the Landlord and trades people.
- The Tenants have put the property at significant risk by damaging the water filtration system, hot water tanks and well.
- There was a breach of a material term of the tenancy agreement 10.2 (a) fixing the damaged filtration system 13.2(b) to fix the damage the tenant did to the filtration system and well.

There was no issue that the Tenants received the Notice in person December 27, 2019.

The Landlord testified as follows in relation to the first point noted above as a basis for the Notice.

She is relying on exhibit 22 being a letter from the Tenants dated January 08, 2020. She submitted that the Tenants threatened and intimidated her in this letter.

She is relying on exhibit 23 being emails and text messages from the Tenants. These are about items to be replaced; however, the items were working. The house was in good order at the start of the tenancy.

She is relying on her written submissions.

I asked the Landlord to point to abusive or threatening language in the communications submitted. The Landlord again referred to exhibit 22 and 23. The Landlord said some of the emails from the Tenants are not truthful.

I asked the Landlord again to point to abusive or threatening language in the communications. The Landlord said it was the “overall concept” of the communications. The Landlord acknowledged that all of the communications are about repairs. The Landlord took issue with the Tenants not wanting the plumber to attend the rental unit, threatening that they will take this matter to the Supreme Court, talking to others in the community about the Landlord and the way in which they spoke to the Witness.

I asked the Landlord to point to the evidence showing the Tenants' requests were unreasonable. The Landlord said the Witness would testify to this. The Landlord testified that the washer and dryer in the rental unit were working contrary to the Tenants' position.

The Landlord testified as follows in relation to the second point noted above as a basis for the Notice.

She is relying on exhibits 22, 23, 24 and 25. She is relying on the way the Tenants treated her trades people. The Tenants would not allow the plumber in the house. The Tenants yelled and screamed at the plumber and have a volatile nature. The police were present when the Notice was served and multiple other times. She is relying on exhibit 14 in this regard.

The Landlord testified that she does not feel safe.

The Landlord testified as follows in relation to the third point noted above as a basis for the Notice.

The Tenants damaged the filtration system in the rental unit. The whole system was damaged and inoperable. This could cause serious harm to the well. She had to replace a ballast in the filtration system because of the Tenants. This cost over \$600.00.

The Tenants damaged the hot water tank. The Witness will testify that someone had been tinkering with it. She is relying on exhibit 30 in relation to this. The emails show the Tenants acknowledged working on the hot water tanks.

She is relying on exhibit 31 to show the Tenants did something in relation to the well settings. The Tenants should not have been touching the settings for the well.

The Landlord testified as follows in relation to the fourth point noted above as a basis for the Notice.

The Tenants have breached a material term of the tenancy agreement by barring entry to the rental unit. She is relying on exhibit 6 and 9. This was addressed in a previous decision between the parties in which the Tenants admitted to barring entry.

I asked the Landlord when she provided the Tenants proper notice in accordance with the *Residential Tenancy Act* (the “*Act*”) to enter the rental unit and the Tenants blocked or otherwise refused entry. The Landlord pointed to exhibit 11 being a notice dated December 21, 2019. The Landlord testified that the plumber was barred entry on December 27, 2019 and Tenant L.C. yelled and screamed at the plumber. The Landlord also pointed to exhibit 10 being a notice dated December 16, 2019. The Landlord did not outline any further incident when she served proper notice in accordance with the *Act* and the Tenants barred entry.

The Witness testified as follows in relation to questions from the Landlord and me.

He received essay style text messages from the Tenants. He asked the Tenants several times to contact the Landlord. The Tenants were asked in writing not to contact him, but they still did.

He went to post a notice to enter on the Tenants’ door. He was confronted by the Tenants. He had to run from a pack of dogs. The Tenants accused him of being a stalker. He left and came back with police.

The Tenant attempted to fix a bulb in the filtration system and damaged the system. The Tenant should not have been fixing the system and should have left it to a professional to do. The part needed to fix the system was back ordered and took 90 days to arrive.

The well was deemed not to be working. The Tenants did not allow him access to test it. When he got access, the well was working perfectly.

In relation to the hot water tank, he did not see anything wrong with it.

The Witness testified as follows in relation to questions from the Tenants.

He did not have the part needed to fix the filtration system on December 21, 2019 when notice of entry was served on the Tenants. The notice of entry was served to access the rental unit to test the well equipment and check to see if the water system was fixed. The second notice he served was the Notice.

His son witnessed the incident where he had to run from the dogs.

He provided written notice to the Tenants to stop contacting him with the Notice.

During the questioning, Tenant L.C. asked if the Witness could recall times the Tenants were abusive towards him. The Witness said he did not feel threatened by the Tenants but found the Tenants unpleasant.

The Landlord pointed to exhibit 8 in relation to the Witness asking the Tenants to stop contacting him.

The Tenants disputed the grounds for the Notice and testified as follows.

They realized upon move-in that a lot of items in the rental unit were damaged. They are relying on exhibit H for this. The hot water was not functioning. The washer and dryer were in a poor state. They are relying on exhibit 1 for this. It was their responsibility to notify the Landlord when issues or problems arose. They also asked the Landlord for updates.

The Landlord left them in an impossible situation because she stopped responding to them in November. The Landlord would not help them but got mad when they tried to address problems themselves.

The incident alleged by the Landlord and Witness in relation to Tenant L.C. yelling and screaming at the Witness and letting the dogs out is completely fabricated. This never happened. They were not home when the Witness attended to serve the notice of entry. They came home to find the notice.

Further, the plumber never came back to do repairs. The plumber came back to serve the Notice.

In relation to the December 21, 2019 letter from the Landlord in evidence as exhibit 8, they never received this.

In relation to exhibit 10, the letter from the Landlord dated December 16, 2019, they never received this.

In reply, the Landlord denied that she stopped communicating with the Tenants.

Analysis

The Notice was issued 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*. There is no issue that the Tenants received the Notice December 27, 2019. The Application was filed January 02, 2020, within the time limit.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Sections 47(1)(d)(f) and (h) of the *Act* state:

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

(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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(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;

I have reviewed the communications between the Landlord and Tenants and Witness and Tenants. I have only considered the communications that occurred prior to the Notice being issued as the issue before me is whether the Landlord had grounds to issue the Notice.

From a review of the communications between the Landlord and Tenants, I find the following. There are a lot of communications. However, the Landlord has not shown that the number is unreasonable such that it amounts to a significant interference or unreasonable disturbance. Most of the communications are discussions between the parties. The subject matter of the communications relates to tenancy issues. The Landlord has not shown that the subject matter of the communications is unreasonable. I am not satisfied that the Tenants used abusive or threatening language in the communications. I note that the Landlord was unable to point to language that was abusive or threatening during the hearing.

I do accept that some of the communication and some of the wording used was unnecessary. I do accept that there were times when the parties were arguing back and forth by text. However, I find both parties could have communicated differently and that neither party took steps to diffuse the situation.

I am not satisfied the communications between the Landlord and Tenants amount to a significant interference or unreasonable disturbance.

In relation to the communications between the Witness and Tenants, I find the parties were engaged in mutual dialogue back and forth. Again, there were some comments made on both sides that were not necessary. However, I am not satisfied the Tenants used abusive or threatening language in these communications. Further, the Witness testified that he did not feel threatened by the Tenants and simply found them unpleasant.

The Landlord and Witness testified that the Tenants were told to stop communicating with the Witness. However, in the communications I have, the Witness continued to initiate communication with the Tenants up until December 16, 2019. Further, the letter the Landlord and Witness said was provided to the Tenants about this is dated December 21, 2019. The Landlord did not point to documentary evidence showing the Tenants continued to communicate with the Witness between December 21, 2019 and the date the Notice was issued.

I do accept that the text message and letter sent by Tenant L.C. to the Witness was unnecessary and inappropriate. However, I am not satisfied they are abusive or threatening and again note that the Witness testified at the hearing that he did not feel threatened by the Tenants. I am not satisfied the text and letter amount to a significant interference or unreasonable disturbance sufficient to end the tenancy.

I am not satisfied the Landlord has proven the Tenants seriously jeopardized the health or safety or lawful right of the Landlord or Witness. The Landlord relied on communications which occurred after the Notice was issued which I have not considered as stated above. The Landlord relied on communications that I have already commented on above. I am not satisfied the communications threatened health, safety or a lawful right. The Landlord relied on an email outlining police file numbers. In the absence of further details about these incidents, I do not find the police numbers of assistance.

I find the following in relation to the Tenants denying access to the rental unit. I note that this issue is not actually stated on the Notice or attached letter. The Tenants are not required to agree to entry. If the Landlord needs to enter the rental unit, and the parties cannot work this out amongst themselves, the Landlord can serve the Tenants notice in accordance with section 29 of the *Act*. The Landlord only served notice in accordance with section 29 of the *Act* once, on December 21, 2019. The notice was to enter December 27, 2019. I understood the Tenants to dispute that the Witness tried to enter December 27, 2019 but was denied entry. In the absence of further evidence on this, I am not satisfied the Tenant stopped the Witness from entering December 27, 2019. I note that the Witness's testimony was that the incident with the Tenants yelling and the dogs occurred when he served the notice to enter, being December 21, 2019.

I have read the prior decision between the parties. I acknowledge that it states Tenant L.C. "testified that when BT came to the property to install the needed parts for the well and U.V. filtration system, she asked him to leave and wanted to get a ruling from the Branch before he did any work". However, there is no date that this occurred. The decision notes that the part for the filtration system arrived January 02, 2020. Therefore, I am not satisfied this occurred December 27, 2019 or that it occurred prior to the Notice being issued.

In relation to the allegation that the Tenants yelled and screamed at the Witness or were volatile, the parties gave conflicting testimony on this point. In the absence of further evidence showing this occurred, I am not satisfied it did.

I am not satisfied the Tenants put the rental unit or property at significant risk or caused extraordinary damage. These are high standards.

In relation to the filtration system, I am satisfied the Landlord told the Tenants they could deal with the bulb based on the text messages submitted by the Tenants. If a professional was required to do this, the Landlord should have arranged for one. Even accepting that the Tenants did something to break the filtration system, I am not satisfied based on the evidence that this posed significant risk or amounted to extraordinary damage. I asked the Landlord about this numerous times during the hearing. The Landlord continually focused on what might have happened or could have happened. The Landlord did not point to compelling evidence that there was significant risk or extraordinary damage caused. Further, I find from the circumstances that neither the Landlord nor the Witness found this to be significant or extraordinary as both seemed content to wait 90 days to address the issue. If the Tenants caused significant risk or extraordinary damage back in October then I would expect the Landlord to have issued the Notice back in October rather than two months later.

I am not satisfied based on the evidence provided that the Tenants damaged a hot water tank. Even if the Tenants did, the Landlord has not provided a sufficient explanation, or provided sufficient evidence, to show this amounts to significant risk or extraordinary damage.

I am not satisfied based on the evidence provided that the Tenants damaged the well.

In relation to the breach of a material term, I am not satisfied the Landlord can rely on the Tenants denying access as this is not what the letter attached to the Notice states. The letter states that the breach related to the filtration system and well. The evidence does not support that the Tenants breached a material term of the tenancy agreement in relation to either.

In the circumstances, I am not satisfied the Landlord has proven the grounds for the Notice.

I do note that, while the Tenants were successful in this application, it is open to the Landlord to issue a new One Month Notice if inappropriate communications continue and do amount to a significant interference or unreasonable disturbance.

Given the Landlord has failed to prove the grounds for the Notice, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants are awarded reimbursement for the \$100.00 filing fee. The Tenants can deduct \$100.00 from one future rent payment as 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: March 19, 2020

Residential Tenancy Branch