



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

RB attended with the landlords, and testified on behalf of the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenants' application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' application.

As both parties confirmed receipt of each other's evidentiary materials, with the exception of the aforementioned items, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 1 Month Notice dated March 6, 2020, which was personally served on the tenants on that date, I find the 1 Month Notice duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, both parties confirmed that the utilities are now in the landlords' names, and the tenants no longer require an order for the landlords to comply with the *Act* and regulation in relation to the utilities. On this basis, this portion of the tenants' application is cancelled.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order for the landlords to comply with the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on March 4, 2005, with monthly rent currently set at \$1,000.00, payable on the first of every month. The landlords collected a security deposit in the amount of \$325.00, which they still hold.

The landlord issued a 1 Month Notice to End Tenancy on March 6, 2020, providing following grounds:

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

The tenants reside upstairs, while two other tenants reside downstairs. The landlords provided the following reason for why they are requesting an Order of Possession. I note that both parties provided oral testimony as well as written submissions. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The landlords testified that the tenants are repeatedly late in paying their rent, and often in partial instalments. The landlords submitted that this has been an issue for many years. The landlords testified that that this included the most recent rent payments for January, February, and March of 2020. The landlords testified that the only month the tenants paid in full, and on time was for April of 2020. The landlords testified that they have given repeated warnings to the tenants that they expected rent to be paid on time, and in full. The landlords confirmed in the hearing that the warnings were verbal.

The landlords provided further reasons for why they wish to end this tenancy. The landlords provided detailed testimony of the interactions between the tenants with the downstairs tenants, which have involved disputes over the utility bills. The utility bills were originally in the upstairs tenants' names, and a dispute arose out of what portion both tenants were to pay. The downstairs tenants have filed a claim in small claims court.

The landlords testified that the tenants would evade the landlords' and downstairs tenants' request to see or obtain copies of the utility bills, and the landlords believe that the tenants have forged documents such as the tenancy agreement.

The landlords testified that the tenants have acted in an aggressive and hostile manner towards them, and the downstairs tenants, and this has resulted in an assault charge against WM. The landlords included an undertaking issued by a police officer for the tenant WM to refrain from communicating, directly or indirectly, with the downstairs tenant FK. The landlords testified that the matter is still before the courts.

The landlords submit that the downstairs tenants have been cooperative, and the upstairs tenants are the ones who have created a "toxic environment". The landlords testified that they are unable to communicate with the tenants, and that they are jeopardizing the health and safety of the landlords and other tenants.

The tenants responded that they have resided there for 15 years, and that the landlords have only issued the 1 Month Notice after the tenants requested in writing that the utilities be in the landlords' names. The letter dated March 5, 2020 was submitted in evidence.

The tenants submit that the conflict between them and the downstairs tenants arose out of the issue regarding utilities, and that was because the landlords have placed the responsibility of dealing with the utility payments for both rental units on them. The tenants dispute ever threatening the landlord, and that they barely speak to the landlords at all. The tenants are requesting an order that the landlords refrain from harassing them, and communicate to them by email or by placing written communications in their mailbox. The tenants testified that they had to call the police because the landlords were harassing them.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed her application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving they have justified the end of this tenancy for the reasons provided on the 1 Month Notice.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...

The tenants do not dispute that rent payments were made on dates other than the first of the month, and it was undisputed by both parties that this has occurred for some time.

I have considered the evidence submitted as well as the sworn testimony of both parties. I note that the landlords have only given verbal warnings to the tenants despite the lengthy history of late rent payments.

I find that the landlords have failed to provide sufficient, written warning that rent payments paid after the first of every month are not acceptable. I find the continued acceptance of late rent payments without any written warnings raises the issue of implied waiver. Although rent may be payable on the first of the month, the acceptance or implied acceptance of late payments, may contribute to ambiguity. In this case the landlords' own testimony is that this has occurred for years.

A warning to a tenant must be unambiguous and clear. By accepting late rent payments on multiple occasions without properly informing the tenants in writing that these payments were considered late, and could possibly be considered a breach of the tenancy agreement and the *Act*, the terms of the tenancy become ambiguous. I find that the landlords had accepted late rent payments for a long period of time, and have failed to clearly communicate to the tenants that this is not acceptable. On this basis, I find that the landlords have not sufficiently established that this tenancy should end on the grounds of repeated late rent payments. I therefore dismiss the landlords' application to end the tenancy on the grounds of repeated late rent payments.

I find it undisputed by both parties that the relationship between the tenants and the landlords, as well as the downstairs tenants have become quite strained. The parties are currently involved in active civil and criminal court matters that are still outstanding, and the tenant WM is currently bound by a no-contact order with one of the other tenants. In consideration of the incidents that have taken place and testimony and evidence of both parties, I find that the majority of the incidents and disputes that have taken place are related to the dispute over the payment of utilities. Prior to April 1, 2020, the utilities were in the tenants' names.

Section 1 of the **Residential Policy Guidelines** states the following about shared utilities:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

Despite the landlords' claims that the downstairs tenants have been forthright and cooperative, I find that the requirement of the upstairs tenants to have the utilities in their name has caused significant conflict between the upstairs and downstairs tenants. Despite the landlords' claims that the tenants have forged documents, and are the parties who have created a "toxic environment", I find that the landlords have played a role in the ongoing dispute between the tenants.

I have placed considerable weight on the fact that one of the tenants is now before the courts, and that this has resulted in a no contact order between the tenants. As of the hearing date, the matter is still outstanding. I am not satisfied that the landlords have provided sufficient evidence to support that the tenants pose a significant risk to the health or safety of the landlords or other tenants, or to the landlord's property. Although I find that the tenants may have caused a significant disturbance, I find that there is conflicting evidence about which party engaged the other.

For all the reasons cited above, I am allowing the tenants' application for cancellation of the 1 Month Notice dated March 6, 2020. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

The tenants requested an order that the landlord refrain from in person communication with them due to the level of conflict between the parties. The tenants requested that communication be by email or written communication in their mailbox. Due to the history between the parties, I find the tenants' request to be reasonable. I order that effective upon receipt of this decision, that the landlords communicate with the tenants in writing either by email to the tenant's email address provided on the cover of this decision, by registered mail, or written communication in their mailbox.

As the tenants' application had merit, I allow the tenants to recover the filing fee from the landlords.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice dated March 6, 2020. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application. I allow the tenants to implement a monetary award of \$100.00 by reducing a future monthly rent payment by that amount.

I order that effective upon receipt of this decision, that the landlords communicate with the tenants in writing either by email to the tenant's email address provided on the cover of this decision, by registered mail, or written communication in their mailbox.

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: April 21, 2020

Residential Tenancy Branch