



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated January 29, 2020 ("1 Month Notice"), pursuant to section 47.

"Landlord FW" and the two tenants did not attend this hearing, which lasted approximately 30 minutes. Landlord MW ("owner") and the landlord's agent SG ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The owner confirmed that he had permission to represent landlord FW, the other co-owner of the rental unit. The owner confirmed that the landlord, who is the owners' property manager, had permission to speak on behalf of both owners (collectively "landlords").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application.

The landlord stated that she sent a separate copy of the landlords' evidence package to each of the tenants on February 10, 2020, by way of registered mail. The landlords provided two Canada Post receipts and confirmed the tracking numbers verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' evidence package on February 15, 2020, five days after their registered mailings.

The landlord testified that the tenants were served with the landlords' 1 Month Notice on January 29, 2020, by posting a copy to the tenants' rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' 1 Month Notice on February 1, 2020, three days after its posting. The tenants stated in their application that they received the 1 Month Notice on January 29, 2020, by way of posting to their door.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord and owner, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2018. Monthly rent in the amount of \$1,538.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlords seek an order of possession based on the 1 Month Notice. The landlords provided a copy of the 1 Month Notice for this hearing. The landlord confirmed that the notice indicates an effective move-out date of February 29, 2020, and the two reasons indicated are:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlord stated that the tenants wanted emergency repairs done in the rental unit, but they did not want anyone to come in and do the work. She claimed that the tenants disrupted the work of the contractors, who came at different times. She maintained that the tenants wanted their rent money back. She said that the tenants threatened the landlords with a monetary claim if they did not get the repairs done, yet the tenants did not show up to a previous RTB hearing on March 31, 2020, so it was dismissed. She stated that the tenants made things difficult for the landlords by posting information online stating that the landlords did not do repairs and showed the landlord's and the contractor's faces. The landlord confirmed that the work was done within 2.5 weeks, but it was frustrating for the landlords, as the tenants interfered with the repairs.

The landlord testified that when the landlords put the rental unit up for sale, the tenants did not cooperate with the realtors. She said that the tenants went on a public website and posted the address of the rental unit, stating that it was infested with mold and the foundation was cracked, which were not true. She maintained that the realtors discontinued their services with the owners, the rental unit did not sell, and it was taken off the market.

The owner testified that his realtor got emails from purchasers who saw the house and she thought her reputation was at stake, so she stopped working for the owners. He said that he does not know whether the landlords can sell the rental unit.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants were deemed to have received the notice. The tenants were deemed to have received the 1 Month Notice on February 1, 2020 and filed their application to dispute it on January 30, 2020. Therefore, they were within the ten-day time limit to dispute the 1 Month Notice. However, the tenants did not show up to this hearing in order to present their submissions or evidence.

Section 47(1) of the *Act* states that landlords may only end a tenancy if at least one of the two reasons indicated on the 1 Month Notice applies.

The landlords did not go through any of their documents during the hearing or indicate why they were submitted for this hearing.

I find that the landlords failed to show that the tenants *significantly* interfered with or *unreasonably* disturbed another occupant or the landlords. I find that the landlords' complaints regarding the tenants interfering with repairs or causing frustration to the landlords does not meet the above standards. I find that the landlords failed to provide specific details or information regarding the repairs and the interference. I also find that the short 2.5-week period of repairs, as described by the landlords, is a short period of time, rather than a longer pattern of behaviour, in order to justify the above reasons.

I find that the landlords failed to show that the tenants knowingly gave false information to prospective purchasers of the rental unit. The owner claimed that the realtor was worried about her reputation, so she discontinued her services. I also find that the landlords failed to go through any online information that they said the tenants posted about the rental unit. The landlords did not review their submitted evidence during the hearing.

For the above reasons and on a balance of probabilities, I find that the landlords provided insufficient evidence that the tenants or people permitted on the property by the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord or the tenants knowingly gave false information to prospective tenants or purchasers of the rental unit. Therefore, I find that the landlords did not issue the 1 Month Notice for a valid reason.

The landlords are not entitled to an order of possession. The landlords' 1 Month Notice, dated January 29, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are not entitled to an order of possession.

The landlords' 1 Month Notice, dated January 29, 2020, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 03, 2020

Residential Tenancy Branch