



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 28, 2020 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 67 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence.

The tenants confirmed personal receipt of the landlord's 1 Month Notice on June 29, 2020. The landlord confirmed service on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 1 Month Notice on June 29, 2020.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to provide services or facilities required by law?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants authorized to change the locks to the rental unit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on November 1, 2018. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The tenants seek to cancel the landlord's 1 Month Notice. The tenants provided a copy of the 1 Month Notice for this hearing. Both parties agreed that the notice indicates an effective move-out date of July 31, 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;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord stated the following facts. The landlord referenced his written submissions provided for this hearing. This is the parties' second RTB hearing. The tenants have made promises and have been uncooperative. This is a working farm property, which the landlord is required to look after. The tenants have not cooperated regarding the chair, bird feeders, and other issues. The tenants want the landlord to hire someone to look after the property, including watering the grass. The landlord does not see the situation improving or changing. This is not a good fit for the tenants to live at the rental unit. The tenants only want what they want to do. The tenants only want to aggravate the landlord and have called the police three times.

The male tenant stated the following facts. The landlord has no grounds to evict the tenants. The tenants have had reasons to call the police, but the landlord is friends with the police, so no action is taken against him. The landlord tries to control how the tenants live at the rental unit. The landlord enters the basement and upstairs of the rental property, even though these are not common areas. The landlord causes confrontations with the tenants. The landlord waters the grass at 9:00 p.m. or later and mows the lawn at different times. The tenants feel that they cannot use their yard when the landlord is there because they do not want to get into a confrontation with him.

The tenants seek to change the locks to the basement door at the rental property because they say that the basement is not a common area, the landlord has entered without notice or permission at least three times, and it is where the washer and dryer are located. The landlord disputes this claim, stating that this is a common area, as he has his own storage area with supplies to maintain the rental property, which he has been accessing since the beginning of this tenancy, and he does not enter the tenants' rental unit to get to this basement.

The tenants seek to change the locks to the upstairs main area of their rental unit. They said that the landlord has entered this area without notice or permission, as he has changed the bird feeders. The landlord disputes entry without notice, stating that he provided written notices for this hearing. He claimed that he has no issue with entering as per section 29 of the *Act* and the covid-19 health and safety regulations.

The tenants seek to restrict the landlord's right for yard maintenance, including mowing the lawn, watering, sprinklers, and weeding, at the rental property. They claim that the landlord should not be performing the yard maintenance, he should get someone else to do it. They seek for the landlord to advise them of a maintenance schedule, since he waters the yard past 9:00 p.m., and they want to avoid confrontation with him. The landlord disputes the tenants' claims, indicating that this is a working farm, he does not interfere with the tenants' right to quiet enjoyment, and he is responsible for the yard maintenance as per the parties' tenancy agreement.

The tenants seek for the landlord to complete snow removal at the rental property. Both parties agreed that the landlord refuses to plow snow under three inches high, only removing snow over three inches high at the rental property.

The tenants seek that their trailer be returned by the landlord and allowed to be stored in the driveway at the rental property, or a rent reduction of \$150.00 per month. They claim that they received a Notice Terminating or Restricting a Service or Facility, dated June 28, 2020, and effective on July 1, 2020, from the landlord. They provided a copy of the notice. The landlord claimed that he moved the tenants' trailer to the back field of the property, the tenants have access to it and knowledge of it, their trailer is not being used or maintained, and they need to get rid of it. He claimed that if they want to store it, they can do so in the back, not in the driveway as originally agreed, because it interferes with the landlord's ability to garden in that area. The tenants claim that they need to have access to their trailer, which can only be done in the driveway, not the back area.

The tenants seek a monetary order of \$7,875.00 plus the \$100.00 application filing fee. The landlord disputes this claim.

The tenants provided a monetary order worksheet claiming \$500.00 for the two times the landlord entered the rental unit without notice or permission, \$200.00 for the two times the landlord went into the yard and took the bird feeders down when the tenants were away, and \$1,075.00 (\$25.00 per day) since May 16, 2020 when the bird feeders were taken down and put in the garbage by the landlord. The tenants seek \$2,000.00

(\$100.00 a month for 20 months since November 2018) when the landlord caused a loss of quiet enjoyment, \$1,500.00 (\$500.00 per incident) that the tenants had to call the police three times regarding the landlord, \$150.00 for the landlord restricting access to the tenants' trailer, and \$300.00 for three months from December 2019 to February 2020 when the landlord failed to plow the snow in the driveway unless it was more than three inches deep. The tenants seek \$1,650.00 (11 months at \$150.00 per month since August 2019), for the landlord storing siding material on the deck, the windows not being installed, and the washer and dryer being stored in the basement. The tenants seek \$500.00 for the landlord issuing the 1 Month Notice in this application.

Analysis

1 Month Notice

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 received the notice. The tenants received the 1 Month Notice on June 29, 2020 and disputed it on the same date. Therefore, they were within the ten-day time limit to dispute the 1 Month Notice. The onus shifts to the landlord to prove the reasons on the 1 Month Notice.

Section 47(1) of the *Act* states that a landlord may only end a tenancy if at least one of the two reasons indicated on the 1 Month Notice applies. For the below reasons and on a balance of probabilities, I find that the landlord provided insufficient evidence that the tenants significantly interfered with or unreasonably disturbed the landlord or seriously jeopardized the health, safety or lawful right of the landlord. Therefore, I find that the landlord did not issue the 1 Month Notice for a valid reason.

I find that the landlords failed to show that the tenants *significantly* interfered with or *unreasonably* disturbed or *seriously jeopardized* the health, safety or lawful right of the landlord. I find that the landlord's complaints regarding the tenants' lack of "cooperation" or lack of a "good fit" do not meet the above standards. Both parties have conflict and issues regarding the yard maintenance, the trailer, the snow, the bird feeders, the grass watering, and other issues. However, I do not find this conflict to meet the above criteria; they are areas of disagreement and dispute between the parties. I also find that the landlord failed to provide specific details or information regarding his claims, frequently referencing his written statements but failing to go through them during the hearing.

The tenants' application to cancel the 1 Month Notice is allowed. The landlord is not entitled to an order of possession. The landlord's 1 Month Notice, dated June 28, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Other Orders

I order both parties to comply with section 29 of the *Act*, which requires the landlord to provide written notice prior to entering the rental unit and requires the tenants to provide access to the rental unit once that notice is given, whether or not they are present. I also order both parties to comply with the governmental health and safety regulations regarding the covid-19 pandemic, that are currently required to be followed. The landlord agreed to do so during the hearing.

I find that the tenants were unable to show that they are entitled to exclusive use of the yard or the basement at the rental property, as this is not indicated in their tenancy agreement. I find that both these areas are common areas and the landlord has access to and use of them. The yard maintenance, which is the responsibility of the landlord, is outlined in the parties' tenancy agreement addendum provided for this hearing. I do not order the landlord to give the tenants a schedule for yard maintenance. However, the landlord is required to abide by local bylaws regarding noise at the rental property, so that it does not interfere with the tenants' right to quiet enjoyment.

I find that the tenants are not entitled to change the locks to the basement door because I find this is a common area, the landlord does not enter through the tenants' unit to access it, and the landlord has storage for his own maintenance supplies there since the beginning of this tenancy. I find that the tenants are not entitled to change the locks to the upstairs main area of their rental unit. I find that they were unable to provide sufficient evidence of the landlord entering without notice, which the landlord disputed.

I order the landlord to complete snow removal at the rental property. The landlord is required to complete snow removal according to the parties' tenancy agreement and addendum and the landlord's confirmation during the hearing. This includes all snow removal, regardless of the height. Snow removal is also required by local bylaws.

I order the landlord to allow the tenants to store their trailer at the rental property, as per the parties' tenancy agreement. The landlord is not permitted to move this trailer, without the tenants' consent. However, the parties' tenancy agreement does not indicate where the trailer should be stored. The landlord agreed that the tenants' trailer

has been stored in the driveway of the rental property. The tenants maintained that access to their trailer was blocked by the landlord's vehicles and machinery, they had to ask for access, and the area in the back was steep and unsafe for the trailer.

If the landlord is unable to accommodate the storage of the tenants' trailer in the driveway at the rental property, I order the tenants to reduce their monthly rent by \$50.00 per month, for the remainder of this tenancy, beginning on the first day of the month following the violation. The tenants are required to maintain valid auto insurance in order to store the trailer in the driveway, as per the local bylaws.

Monetary Claim

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I award the tenants nominal damages of \$100.00 for the landlord moving their trailer from the driveway without their permission, where they were previously permitted to store it as per their tenancy agreement and restricting their access to it. I find that this a reasonable amount for the inconvenience.

I award the tenants nominal damages of \$100.00 for the landlord failing to plow the snow under three inches at the rental property, as per the landlord's admission and as required by the tenancy agreement and addendum. I find that this a reasonable amount for the inconvenience.

The remainder of the tenants' monetary application is dismissed without leave to reapply. I find that the tenants failed to show how they arrived at their monetary figures, claiming they were based on previous RTB precedents, but not providing copies of same. In any event, I am not bound by previous RTB decisions.

I also find that the tenants are not entitled to compensation for the landlord exercising his legal right under section 47 of the *Act* to issue a 1 Month Notice and appearing at this hearing to provide his submissions. I find that the tenants' decision to call the police on the landlord is their choice, they are not required to do so, and asking for compensation from the landlord for their actions is not a valid claim. I find that the other claims made by the tenants do not merit monetary compensation, as the events were disputed by the landlord and I find that the tenants did not sufficiently prove a loss.

As the tenants were partially successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The landlord is not entitled to an order of possession. The landlord's 1 Month Notice, dated June 28, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

If the landlord is unable to accommodate the storage of the tenants' trailer in the driveway at the rental property, I order the tenants to reduce their monthly rent by \$50.00 per month, for the remainder of this tenancy, beginning on the first day of the month following the violation. The tenants are required to maintain valid auto insurance in order to store the trailer in the driveway, as per the local bylaws.

I order the tenants to reduce their monthly rent payable to the landlord for this rental unit and this tenancy, by \$300.00 total on a one-time basis only, in full satisfaction of the monetary award issued at this hearing.

I order both parties to comply with section 29 of the *Act* and the governmental health and safety regulations regarding the covid-19 pandemic.

The remainder of the tenants' application is dismissed without leave to reapply.

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: July 27, 2020

Residential Tenancy Branch