



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice);
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to complete repairs; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant T.S. (the Tenant) and two agents for the Tenants, J.S. and S.S. (the Agents for the Tenants'), the Landlord, and an agent for the Landlord S.G. (the Landlord's Agent), all of whom provided affirmed testimony. The Landlord and the Landlord's Agent confirmed receipt of the Application, the Notice of Hearing, and the Tenants' documentary evidence and raised no concerns regarding service or the acceptance of the Tenants' documentary evidence for consideration. As a result, the hearing proceeded as scheduled and I accepted all of the Tenants' documentary evidence for consideration. No documentary evidence was served on the Tenants or submitted to the Residential Tenancy Branch (the Branch) by the Landlord or the Landlord's Agent in relation to this matter.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application. At the request of the Landlord's Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that only two of the Applicants, G.S. and T.S. are listed as tenants under the tenancy agreement. During the hearing the parties confirmed that the remaining applicants are in fact occupants of the rental unit, or other parties assisting the Tenants with the Application, and not tenants. As a result, I have removed all applicants from the Application who are not tenants under the tenancy agreement, as they have no rights or obligations under the Act in relation to this tenancy.

Preliminary Matter #2

The parties agreed that no 10 Day Notice was served on the Tenants. As a result, I have amended the Application to remove the Tenants' request for cancellation of a 10 Day Notice.

Preliminary Matter #3

In their Application the Tenants sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the Tenants' Application seeking repairs to the rental unit is not related to the One Month Notice or the continuation or

end of the tenancy, I exercise my discretion to dismiss this portion of the Application with leave to reapply.

As a result, the hearing proceeded based only on the Tenants' Application seeking cancellation of a One Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of a One Month Notice?

If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month to month tenancy began on January 1, 2018, that rent in the amount of \$2,500.00 was due on the first day of the month at the start of the tenancy, and that a security deposit in the amount of \$2,500.00 was paid. During the hearing the parties agreed that these are the correct terms of the tenancy. They also agreed that only G.S. and T.S. are tenants under the tenancy agreement but disagree about whether additional occupants, some of the Tenants' adult children, were permitted to reside in the rental unit.

The Landlord's Agent stated that on June 25, 2020, numerous high-value appliances were stolen from a warehouse they maintain on the residential property where the rental unit is located, as they run an appliance business, and that this warehouse was not rented to the Tenants or the other occupants of the property under their tenancy agreements. The Agent stated that when they saw social media posts advertising their stolen items for sale, they made arrangements to view the products, which were being sold by the Tenants' son P.S. out of a shipping container located on property owned by the Tenants. The Agent stated that they were not aware that the person selling the items was the Tenants' son or that the items were located on property owned by the Tenants at the time they viewed the items for sale, but later became aware of this through the police investigation. The Agent stated that although police attended the property where their stolen items had been located the following day, by that time the items had been moved, likely because the Tenants had warned their son P.S., as the Agent had made the Tenants aware of the theft.

The Agent stated that the Tenant T.S. acknowledged to them that their son P.S. stole the items and that although they had requested that their son return them, they had refused. The Agent stated that the Tenants had also agreed to vacate the rental unit but had not given a date. The Agent stated that they and the Landlord are not trying to be unreasonable and force the Tenants off the property quickly, as the Tenant G.S. is not in good health, but given the jeopardy to their property and their possessions, they need the Tenants to move.

The Agent also stated that despite the fact that only the Tenants were permitted to reside in the rental unit, several of the Tenants' adult children reside there, including P.S., and that the occupants of the adjoining unit of the duplex are now concerned about the safety and security of their own possessions, given the behavior of the Tenants' son P.S.

Based on the above, the Agent stated that a One Month Notice was personally served on the Tenants on July 14, 2020. In the hearing the Tenant and their Agents acknowledged receipt on that date.

The One Month Notice in the documentary evidence before me is signed and dated July 13, 2020, has an effective date of August 31, 2020, and states the following grounds for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk.
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Under the details of cause section of the One Month Notice it states:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): ON JUNE 25, WE DISCOVERED THAT THE TENANT'S SON PAVEN SANGHERA WHO WAS ALSO RESIDING WITH THE TENANT IN OUR SUITE RENTED TO THEM, STOLE OUR APPLIANCES STORED IN SEPARATE WAREHOUSE ON SAME PROPERTY. LANGLEY POLICE FILE NUMBER: 20-21557 WE REQUESTED THE TENANT TO TELL HER SON TO RETURN THE APPLIANCES HE HAD STOLEN. BUT THE SON REFUSED. OUR OTHER TENANTS ON THE PROPERTY DO NOT FEEL SAFE ANYMORE AND NEITHER DO WE, AS HE COULD BE STEALING AGAIN. TENANT'S SON HAS ALSO BEEN INVITING HIS FRIENDS ON TO OUR PROPERTY WHICH WE DO NOT ALLOW AT ALL. THE SUITE WAS RENTED TO TENANTS FOR THEIR AND OTHER TENANTS PEACEFUL ENJOYMENT.

The Tenant and the Tenants' Agents denied that P.S. stole any property as alleged or that the Tenants' ever acknowledged that P.S. stole this property. Although the Tenant T.S. and the Agent J.S. acknowledged that the police attended property owned by the Landlords in relation to the theft, they stated that it is their belief that nothing was found as no further action was taken and the police file has been closed without any charges being laid.

Although T.S. stated in the hearing that they can move when their own property is ready, they did not have a definitive date for any such move and stated it could be several months. The Agents for the Tenants also questioned the Agent for the Landlord's testimony that their neighbours on the property are afraid, as they have a good relationship with them. As a result of the above, the Tenant and their Agents argued that the One Month Notice is not valid.

Both parties agreed that rent for August 2020, had been paid.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that when a tenant disputes a notice to end tenancy served by a landlord, the onus to prove the validity of the notice to end tenancy is on the Landlord.

Although the Landlord and their Agent testified that the Tenants' son, who was permitted onto the rental property by the Tenants, stole property belonging to the Landlord and that other occupants of the residential property are therefore worried about their own possessions, they did not submit any documentary or other evidence in

support of these claims, except for a police file number. Further to this, the Tenant T.S. and their Agents denied that the Tenants' son stole any property or that their neighbours are afraid.

Based on the lack of corroborating evidence from the Landlord and their Agent and the Tenants' denial of the allegations against them, I therefore find that the Landlord has failed to satisfy me, on a balance of probabilities, that they had cause to serve the One Month Notice. As a result, I grant the Tenants' Application seeking cancellation of the One Month Notice and I order that the One Month Notice is cancelled.

As the Tenants were successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the Act. Pursuant to section 72 (2) (a) of the Act, they are therefore entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice is granted. The One Month Notice dated July 13, 2020, is therefore cancelled and I order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the Act.

Pursuant to section 72 of the Act, the Tenants are entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement for recovery of the \$100.00 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 *Residential Tenancy Act*.

Dated: August 24, 2020

Residential Tenancy Branch