Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, LRE, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the "Application") on September 4, 2020 seeking an order to cancel the One Month Notice to End Tenancy (the "One Month Notice") for Cause. Additionally, they applied for: an order suspending or setting conditions on the landlord's right to enter the rental unit; an order that the landlord make repairs to the unit; an order that the landlord comply with the legislation and/or the tenancy agreement; and compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 23, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenants and landlords both attended the hearing. I provided each party the opportunity to present oral testimony during the hearing.

In the hearing, each party confirmed receipt of the other's evidence. Both parties submitted successive pieces and exchanged these pieces in due course, well in advance of this conference call hearing. The landlords provided evidence with photos showing how they undertook serving their evidence to the tenants.

Preliminary Matters

The tenants have applied on separate grounds concerning the landlord's entry and their requests for repairs to the rental unit. Evidence for these parts of their Application appear in their evidence, and the landlord provided evidence in response to these issues.

At the outset of the hearing I advised the parties that the immediate issue at hand was the end of tenancy, initiated by the landlord by way of notice on August 26, 2020. I stated that I wish to

afford both parties the full opportunity to speak to this in as much description and detail as needed. The parties advised there is another separate hearing to take place the following week for the landlord's urgent need to end the tenancy.

The hearing process is managed by the Residential Tenancy Branch Rules of Procedure that are in place to ensure a fair, efficient and consistent process for resolving disputes. In accordance with Rule 2.3 (re: Related Issues) and Rule 6.2 (re: what will be considered at a dispute resolution hearing) I decline to hear the other claims which the tenants included in their Application. I find these are unrelated to the immediate issue of the end of tenancy.

Based on my review of the documentary evidence provided, I find each party deserves the chance to speak to those issues in oral testimony. They are outside the scope of the immediate matter in this hearing, that which concerns the validity of the One Month Notice issued by the landlord on August 26, 2020. The tenants have leave to reapply on these separate issues in a separate hearing process.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the One Month Notice, pursuant to section 47 of the *Act*?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The tenants submitted a copy of the residential tenancy agreement that is in place. This document shows the tenancy started on February 15, 2015, and both parties signed the agreement on February 21, 2015. The initial rent amount was $1,050.00, and the tenants paid a security deposit amount of $525.00 and a pet deposit amount on $475.00 on February 9, 2015. In the hearing the landlords provided that rent was reduced in a prior dispute resolution process as recompense for the determination that repairs were not properly carried out.

A one-page Addendum forms part of the agreement and was signed by both parties on February 21, 2015. This sets the precise areas on the property that are covered by the agreement and accessible to the tenants. Additionally, it sets the responsibility for payment of

utilities and more broadly the “honour and respect” owed by the tenants to the landlord’s property. Additionally, it specifies that tenants must “respect all local, provincial and federal laws.”

The tenants provided a copy of the “One-Month Notice” document, entered as evidence at the time of their Application. The landlord served this document on August 26, 2020 by registered mail. They provided their receipt and mail tracking number to show this.

On page 2 of the One-Month Notice the landlord indicated the following reasons:

- □ 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
  - □ put the landlord’s property at significant risk

On the One-Month Notice, the landlords filled in the ‘details of the cause’ space: “details provided in “evidence” submitted by landlords to tenants (18 pages).” In the hearing, the landlords stated this was an ‘index of evidence’. The copy in the hearing materials did not have this index and pages of evidence attached. The landlords specified individual pieces in the bulk of their documentary evidence that they say formed the 18 pages served to the tenants with the One-Month Notice.

Elsewhere in the landlords’ evidence is a piece showing their communication to the Residential Tenancy Branch in advance of the hearing on August 31, 2020. This shows items A through H. The landlords emphasized to the branch that they fear the tenants may attempt to alter evidence prior to the hearing. Out of caution, they have an abbreviated list of these pieces; each piece appears elsewhere in the landlord’s evidence.

In the hearing the landlords spoke to the specific problems, from their perspective, that led to the issuance of this One Month Notice. These include:

- one of the tenants causing a disturbance with the immediate neighbouring property when the occupants of that property wished to commence logging – this resulted in a violent act from the tenant, and a file was opened at the RCMP – this occurred in summer 2018 through to spring 2019;
- other interactions with the tenant have led the landlords to conclude that the tenant needs counselling and assistance – this is because of their PTSD due to past military experience;

- the tenants were using the landlords' own phone line illegally – they referred to this as 'wiretapping';
- the tenant owns "sidearms" – firearms that are illegal.

The tenant provided oral testimony in the hearing, to state that some of these matters were before the Residential Tenancy Branch in the past because the landlords' accusations have been continuing since 2016. In describing this, the one tenant drew on the landlord's evidence that states they are the same individual who features in a notice to the public of two individuals wanted for outstanding warrants. Additionally, they pointed to the landlords' submissions which provide that the tenant is an ex-RCMP agent, as well as having a past U.S. Marine career.

The individual pieces of the landlords' index attached to the One-Month Notice are in their provided evidence. They are not ordered within the evidence in the order they are listed. Among these are the tenant's own resume, the landlords' complaints to RCMP in 2018, a 2020 letter to a local Member of Parliament concerning the tenant, and other complaints to the RCMP.

Analysis

The *Act* section 47(1) provides that a landlord may end a tenancy by giving a One-Month Notice for reasons listed therein. When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the One-Month Notice was issued pursuant to section 47(1), and I accept the tenants' undisputed evidence that they received this document on August 28, 2020 in their mail slot. Their Application was filed on September 4, 2020. I find they have disputed the Notice within the timeframe required under the *Act*.

I find the 18 pages that the landlords presented as evidence to the One-Month Notice do not constitute clear reasons why the landlord issued that document. These pages were not properly presented as attached to the document itself for the purpose of this hearing. The landlords bear the burden of proof, and they did not craft their evidence for this hearing in a logical manner to show clear reasons. My review of the evidence had me piecing together what these 18 pages consist of, without a clear index or copies attached in a precise order. I found the only list to state what these documents were to be in an email provided to this Residential Tenancy Branch, sent by the landlords when preparing for this hearing. This communication was deep within a large file containing many pages that the landlord submitted

for this hearing. On this basis, there is a wide possibility for error in my interpretation of what was attached to the One-Month Notice.

I look to the Rules of Procedure for guidelines on presentation of evidence. Rule 3.7 states: "To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible." On this basis, I find there is not sufficient evidence provided by the landlord that shows why they issued the One-Month Notice. I make this ruling on the basis of an administrative practice: with reference to the principles of procedural fairness. I find it unfair to the other party if the Arbitrator is left assembling one party's evidence on their behalf.

In addition, on my evaluation the substance of what the landlords provide on the whole falls short of providing ample justification for issuing the One-Month Notice.

The more recent matters taking place in summer 2020 refer to the tenants intercepting the landlords' own phone line. Additionally, there are the "signs of mental instability" and reference to firearms owned by the tenant. The matter is speculative, and the landlords did not provide definitive proof that these actions on the part of the tenants are in fact happening. The landlords referred to their phone bills for "three years to the present"; however, they did not provide proof of this.

The value of the landlords' other listed items (as attached to the One-Month Notice) is diminished in that other documents refer to events in the past. On these items concerning the tenant attempting to interrupt the neighbour's logging practice, suspicion that one tenant is an individual wanted for outstanding warrants, and the concerns to RCMP and members of parliament that the tenant is an ex-RCMP and one of the tenants owning firearms, I find the questions have been asked and answered. There is no evidence the RCMP pursued an investigation based on the landlords' allegations.

On these past concerns, the tenants provided in their summary account that "the bulk of . . .evidence. . .are transcripted verbatim from previous cases that the Landlords lost." Elsewhere in their evidence, the tenants provided previous dispute hearing file numbers. Given the time that has passed on these matters, as well as the relationship between the parties, I find it more likely than not that these matters came before the branch in the past and did not result in significant findings on the charges. I give these pieces of evidence no weight in determining whether they work toward justification of ending the tenancy. Based on what the landlord presents here, they are speculative and unfounded.

The more recent events in 2020 are not borne out by actual findings that the tenants intercepted the landlords' own phone line. The evidence shows the telecom company proceeded on an investigation; however, there are no replies or results to the investigation. I

similarly find the RCMP did not pursue an investigation on these charges of the landlord. I find they do not match up with the reasons checked by the landlords on the 2nd page of the One-Month Notice.

In this matter, the onus is on the landlord to show that they have cause to end the tenancy. I find the landlords issued the One-Month Notice on substantiated reasons. For these reasons, I order the One Month Notice issued by the landlord on August 26, 2020 to be cancelled. There is not sufficient evidence to prove the grounds listed on that document are valid.

As the tenants were successful in this application, I find they are entitled to recover the $100.00 filing fee paid for this application. I authorize the tenants to withhold the amount of $100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on August 26, 2020 is cancelled. The tenancy remains in full force and effect.

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: October 27, 2020

Residential Tenancy Branch