Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); 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 Tenants, the Landlord, and an advocate/family member for the Landlord (the Advocate), all whom provided affirmed testimony. As the Landlord acknowledged service of the Application and Notice of Hearing and raised no concerns regarding service or timelines, the hearing proceeded as scheduled. 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 parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

As the Landlord acknowledged receipt of the Tenants' documentary evidence in person on September 15, 2020, and by registered mail on September 17, 2020, and raised no concerns regarding service or timelines, I have accepted the documentary evidence before me from the Tenants for consideration.

The Advocate stated that the Landlord had difficulty locating, uploading and serving their documentary evidence, and as a result, it was not emailed to the Tenants until October 23, 2020, and then personally served on them the day prior to the hearing.

Rule 3.15 of the Rules of Procedure states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch (the Branch) not less than seven days before the hearing. Although the Tenants denied receipt of the Landlord's documentary evidence by email, they acknowledged service the day before the hearing. Despite the fact that they had little time to consider the documentary evidence served on them by the Landlord, the Tenants did not seek to exclude this evidence and authorized me to accept it for consideration at the hearing. As a result, I also accepted the documentary evidence before me from the Landlord for consideration.

Preliminary Matter #2

An Amendment was received updating the name of the Applicant M.E. to their full legal name. The Application was amended accordingly.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice)?

If the One Month Notice is upheld or the Tenants' Application is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The written tenancy agreement in the documentary evidence before me, signed on August 29, 2020, states that the month to month (periodic) tenancy stated on October 1, 2012, that rent in the amount of $1,550.00 is due on the first day of each month, and that a $775.00 security deposit was paid. It also states that a stove and oven, refrigerator, window coverings, free laundry, storage, garbage collection, and parking for 3 vehicles is included in the cost of rent. Both parties confirmed that these were the correct terms of the tenancy agreement, however, the Landlord argued that there were several verbal addendums, such as no smoking, no pets, and that all parking was on the street, and that yard maintenance was to be completed by the Tenants as part of the reduced rent.

The Tenants denied the existence of any such verbal agreements and stated that the $1,550.00 rent was what was advertised, not a special arrangement based on a verbal agreement that they complete lawn maintenance, as they did not rent the entire property/home. However, the Tenants agreed that they routinely completed yard maintenance for their own benefit. They also pointed out that the written tenancy agreement explicitly states that a small pet is ok, therefore there is not a “no pets” agreement as alleged by the Landlord.

During the hearing the Landlord and Advocate stated that on August 31, 2020, a One Month Notice was personally served on the Tenants and the Tenants confirmed receipt in this manner and on this date. The One Month Notice in the documentary evidence before me is signed and dated August 31, 2020, has an effective date of October 1, 2020, and lists the following grounds for ending the tenancy:

- The tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Th tenant has not done required repairs of damage to the unit/site/property/park; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Significant details were provided in the details of cause section as shown below:

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):

Unresolved issue to verbal and written notices in regards to parking of your uninsured RV in the back of the property on the gravel pad of 4886 Fairlawn Drive. It was never agreed upon and you were asked to remove it from the property when I noticed it, your rental agreement states 3 vehicles at the time of rental on the date of 01/10-2012 for front street parking at the front of the property, at the time only 2 vehicles were in your possession and the gravel pad was used for my own personal use when it was no longer needed and the space was empty for some time, I verbally mentioned you could park your vehicle to the back making it convenient for grocery drop until I might need this space again. The RV magically arrived 2016 without permission onto the property or in my knowledge of this in possession. I mentioned to you verbally on the day I noticed the RV on the property years back when picking up rent cheques that it needed to be removed (but in my husband then passing I let it be as emotionally I couldn't deal with it) this was discussed and brought up again and you were provided a written notice on 1/06/2020 as the RV is stationary and being stored on the property with refusal of removal that a $200 rental fee would be added and that the area needed to be kept clean. I received your refusal letter 3/06/2020, 3 months have now passed with no resolution or payment for the RV parking on the gravel pad. You have in your possession 3 vehicles parked at the front of the property street parking 2+ years and the added questionable RV parked on the gravel pad. The rental agreement has been breached for quite sometime and with no resolution to the situation at hand along with the verbal abuse by you and your husband and your aggressive behaviour towards me when going over to collect the Hydro bill that was in arrears that I had paid accidentally and in the bank recently processing the post dated cheque for 1/09/2020 early a few days without my knowledge-I gave the bank these to file and they process for me-I asked you kindly to discuss with them as the teller made an error your threats and manipulation will no longer be tolerated. Along with not cutting the grass, keeping the property maintained and in hearing of the complaints from neighbours of you smoking marijuana on the property when no smoking is permitted on the premises and also in recently creating problems with the other tenants and interferring with my business.

During the hearing the parties agreed that the Tenants had not in fact permitted an unreasonable number of occupants in the unit/site/property/park.

With regards to significant interference and unreasonable disturbance of another occupant or the Landlord, the Landlord and Advocate stated that a garage located on the property as well as the parking pad were not rented to the Tenants under their tenancy agreement, and were in fact rented out to other parties. The Landlord and Advocate stated that the Tenants had significantly interfered with them by using the parking pad without permission, thereby negating their ability to rent it out or permit its use by other occupants of the property. The Landlord and Advocate also stated that a tenant who had rented the garage from them for non-residential use (storage of their tools and other business supplies) had complained to them about harassment and interference from the Tenants, and ultimately ended their rental of the garage as a result. Finally, the Landlord and Agent alleged that the Tenants had reported the Landlord to the municipality for a bylaw infraction as they alleged that the garage was being used to run a business, which it was not. Although the Landlord acknowledged that a bylaw officer ultimately found that there was no bylaw infraction, the investigation was a significant disturbance to both them, and the non-residential tenant of the garage.

The Tenants argued that they are permitted under their tenancy agreement to park 3 cars on the property, and therefore they have not significantly interfered with the Landlord by parking there. They also stated that the Landlord permitted them to park the RV on the property and that it has been there, without issue, since 2016. They also denied reporting the Landlord to the municipality for a bylaw infraction and argued that the Landlord has no proof of who made this report, which could have been made by anyone. The Tenants denied harassing or interfering with the tenant of the garage. Although they acknowledged interacting with them on several occasions, they stated that this was a natural result of their permitted use of the yard, which is rented to them under their tenancy agreement, and to request that they leave the garage blinds closed

for privacy reasons, as it is located very close to their yard and windows. The Tenants argued that they were actually being disturbed by the garage tenant, and not the other way around, as the garage tenant was running loud woodworking equipment, such as saws, to clad the walls of the garage in wood and set it up to their preferences.

The Tenants also argued that as the above noted issue regarding the garage tenant was not noted in the details of cause section of the One Month Notice, it cannot constitute grounds for ending the tenancy with the One Month Notice, as they were not even aware that this was an issue until the day before the hearing when the Landlord served their evidence.
Although other issues were noted in the details of cause section of the One Month Notice, such as the smoking of cannabis on the property, a lack of yard maintenance and property upkeep, and aggressive and threatening behavior towards the Landlord by the Tenants, little if any testimony was provided by the parties on these issues and the Landlord and Agent stated that the One Month Notice was really issued because the Tenants are causing damage to a retaining wall by parking their heavy RV there without authorization and their disturbance of the garage tenant.

Both parties submitted documentary evidence in support of their positions.

Analysis

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if:

- there are an unreasonable number of occupants in a rental unit;
- 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;
- the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time; or
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(4) of the Act states that tenants who receive a notice to end tenancy under section 47 of the Act may dispute the notice by filing an Application with the Branch within 10 days after the date they receive the notice.

Based on the affirmed testimony of the parties, I am satisfied that the Tenants were personally served with the One Month Notice in the documentary evidence before me on August 31, 2020. As the Tenants filed their Application seeking to dispute the One Month Notice with the Branch on September 6, 2020, I also find that the Tenants disputed the One Month Notice within the required timeframe set out under section 47(4) of the Act.

As the parties agreed in the hearing that the Tenants had not permitted an unreasonable number of occupants to reside in the rental unit, I find that the Landlord does not have the right to end the tenancy for this purpose by way of the One Month Notice.

Although the Landlord argued that the parking of 3 vehicles included in the cost of rent as set out in the tenancy agreement was meant to be street parking, I do not agree that this is the case. First, the tenancy agreement clearly states that parking for 3 vehicles is included in the cost of rent, and since there is no notation on the tenancy agreement that all parking is street parking, I think it is reasonable to infer that the intention was to allow the Tenants to park up to three vehicle on the property rented to them under the tenancy agreement, especially as there is clearly a designated parking pad/area on the property as well as a garage. It is also not the Landlord's right to assign or restrict street parking, so it makes no sense to me that the Landlord would attempt to do so through the tenancy agreement. Finally, although the Landlord argued that there was a verbal agreement to this affect, the Tenants denied the existence of such a verbal agreement, and as a result, I am not satisfied that any such verbal agreement existed.

Based on the above, I find on a balance of probabilities, that the terms of the tenancy agreement with regards to parking, smoking, and pets are as set out in the written tenancy agreement and therefore the parking of 3 vehicles, on the residential property, is included in the payment of rent under the tenancy agreement, that the Tenants are entitled to have one small pet, and that smoking is not prohibited either inside the rental unit or on the residential property. Having made this finding, I will now turn to the matter of the RV.

The Landlord argued that the Tenants never had permission to store their RV on the property, that it is ruining the retaining wall of the parking area due to its weight, and that despite repeated requests that the Tenants move it, they have refused. For the following reasons, I am not satisfied by the Landlord that all of the above is accurate. By the Landlord's own admission in the details of cause section of the One Month Notice, they have been aware of the presence of the RV on the property in its current location

since 2016, but have failed to take any action, other than allegedly speaking to the Tenants about it once when it was first noticed by them, and sending the Tenants the written letter in June of 2020, requesting that they either remove the RV or pay for its presence eon the property.

Although the Landlord also argued that the RV is damaging the retaining wall, no evidence to corroborate that the RV is the cause for any damage to the retaining wall has been submitted, such as an engineering report, other than one photograph showing a small amount of shift in a wooden post. As a result, I am not satisfied that any damage to the retaining wall has occurred or that any damage that has occurred to the retaining wall is the result of the RV, instead of simply aging or settling as argued by the Tenants.

Although the Tenants argued that they obtained approval for the RV prior to its purchase, the Landlord denied that any such approval was given, and the Tenants did not submit any documentary evidence in support of their claim. As a result, I am not satisfied that any such agreement existed. Although I acknowledge that the Landlord has made few attempts to have the RV removed or to notify the Tenants that it is an issue since it was first brought to the property in 2016, I never the less agree with the Landlord that the Tenants are not permitted under the tenancy agreement to park an RV on the property and I am not satisfied that any subsequent approval was received by the Landlord to do so. I also find it unreasonable to conclude that the provision in the tenancy agreement allowing them to park 3 vehicles allows them to park an RV on the property, as an RV is markedly different in both size and weight to the average vehicle. The RV pictured in the documentary evidence before me is also not self propelled and would be best described, in my opinion, as a trailer, rather than a vehicle.

As a result, I am satisfied that the Tenants are parking an RV/trailer on the property without authorization to do so under the tenancy agreement and pursuant to section 62(3) of the Act, I order the Tenants to have it removed from the property within 60 days of the date of this decision. The Tenants are cautioned that failing to do so may constitute grounds for the Landlord to serve and enforce a One Month Notice pursuant to section 47(1)(l)(ii) of the Act.

Despite the above, I am not satisfied that parking the RV on the property is a breach of a material term of the tenancy agreement. Policy Guideline 8 states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. No such indication is contained in the written tenancy agreement before me and there was a dispute between the parties regarding what type of parking, if any, was permitted on the residential

property during the hearing. Further to this, none of the documentary evidence or testimony before me for consideration satisfies me that any other terms of the tenancy agreement allegedly being broken by the Tenants according to the One Month Notice, such as yard maintenance, are material terms the tenancy agreement.

In any event, even if I were satisfied that material terms of the tenancy agreement had been broken, which I am not, there is no evidence before me that the Landlord complied with Policy Guideline 8 by notifying the Tenants in writing that:

- they have breached the tenancy agreement;
- the breaches relate to material terms of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

As a result, I am not satisfied that the Landlord has grounds to end the tenancy for breach of a material term of the tenancy agreement.

I am also not satisfied that the Landlord has cause to end the tenancy because the Tenants have significantly interfered with or unreasonably disturbed the Landlord or other occupants of the residential property. Although the One Month Notice states in the details of cause section that the Tenants have recently created problems with other tenants and have interfered with the Landlord's business, no details were provided and the Tenants stated that they did not even understand what this was about until the Landlord served their evidence for the hearing on them only one day prior to the hearing. As a result, I am satisfied that the Tenants were not properly notified by the Landlord, either in the One Month Notice, or in any other manner, that disturbances to a non-residential tenant of the garage and a complaint to the municipality in relation to an alleged bylaw infraction formed any part of the basis for issuance of the One Month Notice. As a result, I do not find that the Landlord may rely on either of these arguments for justification for issuance of the One Month Notice before me for dispute.

Although the Landlord stated in the One Month Notice that the Tenants have been verbally aggressive and abusive to them, I am not satisfied by the Landlord that this is the case, as few details were provided by the Landlord in relation to this allegation during the hearing and no corroborating documentary or other evidence was submitted.

Finally, I am also not satisfied that the Landlord has cause to end the tenancy because the Tenants have not done required repairs as I am not satisfied that repairs are required, that any repairs required are necessary as a result of actions or inactions on

the part of the Tenants, or that the Tenants have been notified of the need for any repairs and provided with a reasonable amount of time to complete them.

Based on the above, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice as I am not satisfied that the Landlord has grounds to end the tenancy as set out in the One Month Notice.

As the Tenants were successful in their Application, I also 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, I also authorize the Tenants to make a one time deduction of $100.00 from the next months rent payable under the tenancy agreement in recovery of this amount, or to otherwise recover it from the Landlord.

Conclusion

I order that the One Month Notice dated August 31, 2020, is cancelled. As a result, I order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

The Tenants are also authorized to make a one time deduction of $100.00 from the next months rent payable under the tenancy agreement for recovery of the $100.00 filing fee or to otherwise recover this amount from the Landlord.

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: November 26, 2020

Residential Tenancy Branch