



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, MNDCT, RP, OLC, LAT, LRE

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47 of the Act;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67 of the Act;
- an order requiring the landlord to carry out repairs, pursuant to section 32 of the Act;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the Act;
- an order of authorization to change the lock, pursuant to sections 31 and 70 of the Act; and
- an order to restrict or suspend the landlord's right of entry, pursuant to section 70 of the Act.

Both parties attended the hearing. The tenant was assisted by advocate RW. Witness NB for the landlords also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses

Preliminary Issue – Service of Documents

I accept the tenant's testimony that both landlords were served the application and evidence by registered mail on September 18, 2020. The tenant served extra evidence on October 20, 26 and 31, 2020. The evidence served on October 31, 2020 was regarding events that occurred on October 30, 2020.

The tenant uploaded into evidence 355 documents, including 9 repeated documents and did not include an index or organize these documents. I warn the tenant that he must comply with Rules of Procedure 3.7 and 3.13 and I have the discretion to exclude them.

The landlords confirmed receipt of all packages and that they had enough time to review and respond to the the evidence. Thus, I accept the tenant's evidence and find it was provided to the landlord in accordance with section 89(1)(c) of the Act.

The tenant confirmed receipt of the landlords' evidence served on October 20, 2020. I accept all the evidence served by the landlords in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Unrelated claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the cancellation of the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in May 2017. The respondents became the landlords when they purchased the rental building and obtained possession on August 10, 2020. Rent is \$1,100.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$550.00 was collected and the landlords hold it in trust. The rental unit is the basement of the rental building and the landlords live in the main unit.

Both parties also agreed the tenant received the Notice on September 10, 2020. This application was filed on September 11, 2020 and the tenant continues to live in the rental unit.

A copy of the Notice was provided. The Notice is dated September 09, 2020 and the effective date is October 31, 2020. The reasons to end the tenancy are:

The tenant or a person permitted on the property by the tenant has

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at significant risk.

The Notice details contain a narrative about the tenant's agreement to keep the rental unit clean and the tenant's failure to maintain sanitary standards.

To support the cause for ending the tenancy, the landlords submitted evidence of the tenant's uncleanliness and cooking.

The landlord's realtor provided a statement regarding the rental unit's cleanliness when the landlords viewed it as potential purchasers on April 21, 2020:

When viewing the home located at [anonymized], we were told the tenant was messy but were surprised when we entered the suite how dirty the kitchen area was. We were told he had cleaned up for showings in an effort to help the owner sell the home. **The dishes were not done, there was used oil left in a pan on the stove, the toaster oven/convection oven caked in food remnants and old food on the counter. It was obvious the area had not been cleaned for some time. There was a bad smell**

that was not stale air as the window was open. In my opinion, the suite was more than just a messy tenant, it was unsanitary. At the time, we were concerned about attracting rodents or insects. [Landlords] went into this purchase with the intent of working with the tenant, creating a nice new space for him in hopes he could start fresh and keep the space clean. They discussions with him led them to believe he was also invested in creating a long term, clean space for everyone.

(emphasis added)

The landlord affirmed that during an August 10, 2020 inspection the entire rental unit was covered with a layer of grease, there was at least one inch of oil in the frying pan, every surface was dust-covered and the smoke detector was not connected. Both parties agreed that during the inspection the tenant asked the landlords for a fire extinguisher and a new smoke detector. The tenant said a harmless small fire happened while the he was frying a chicken in March 2020.

The tenant stated he removed the battery of the smoke detector a long time ago because it was constantly going off while he was cooking. The tenant also asked the landlord to install a dishwasher, as this would help him to maintain the rental unit. He has difficulties cleaning his rental unit due to mental health issues.

On August 14, 2020 the landlords entered the rental unit, as the tenant authorized them to access it when he was travelling for three weeks. The kitchen counter was covered with dirty dishes, food containers and leftovers. The stove top was covered on grease and there was at least one inch of oil in the frying pan. Photographs taken on August 14, 2020 were submitted into evidence. The tenant stated the landlords staged the photographs.

The landlords cleaned the rental unit themselves, as they feared pests would be attracted. A text message sent to the tenant on August 14, 2020 was submitted into evidence:

We met with contractor to start renos in ur old suite are and notice the mess left in ur kitchen. We discussed cleanliness and it's unacceptable how u left it. We will have to wash ur dishes as we will have a bug infestation if ur dishes are left out like that for 3 wks,

We will discuss this issue again when u return but the level of cleanliness will have to improve. Enjoy ur holiday and don't let this stress u but it's something that needs to change. Thx.

The tenant did not reply to the above text message but affirmed during the hearing the landlords could have hired a professional cleaning service, per clause 09 of the tenancy agreement dated August 10, 2020. The tenant also submitted photographs of the conditions of his rental unit.

The landlords renovated the rental unit. The exhaust ventilator was working properly, but it was greasy, and a hard-wired smoke detector was installed. Contractor MS provided a signed statement about the rental unit condition's on August 14, 2020:

Dirty dishes were piled up on the stove, in the sink and on almost every horizontal surface in the suite. Clothes were strewn throughout the suite and open food was left out to spoil. Having worked in many hundreds of homes and around peoples belongings, I have to say that this was the worst and most unhealthy living spaces I've ever seen. **I had concerns about rodents and pathogens.**

(emphasis added)

The previous landlord emailed the current landlords about the tenant on September 22, 2020 and referred to the March 2020 fire:

I knew that he was messy but had no idea that the situation had gotten out of control until early March of this year when I went in with my realtor for him to assess the suite for putting the house on the market. I was shocked and disgusted. It was filthy. Dirty dishes, empty food containers, garbage and debris on the floor. I requested that he clean it up. He did (not to what I would have done but it was at least better). He agreed to keep the suite in good condition for the viewing of potential buyers. For the most part, if there was a problem, we would discuss it and come to a resolution. At that time, I likely would not have renewed his lease due to the health and sanitary conditions. Covid hit and no changes were allowed for tenancy. The lease that he signed in May stipulated that the suite had to meet cleanliness and sanitary requirements as per the tenancy act agreement. I also added an addendum that I would be doing monthly inspections (with a notice) because of my concerns. He agreed to all of that. Prior to my moving out, he had been cleaning (I thought I needed to do a final walk through with him but found out I did not). He was working hard getting it cleaned up. In terms of the fire, **I smelled smoke at one point and texted him to see if all was ok. He said he had been cooking something that caught fire to a pan but no damage was done inside. This was true.**

(emphasis added)

After the Notice was issued, on October 30, 2020 the tenant was frying a chicken when the new smoke detector went off. The tenant affirmed there was no fire, just smoke. The landlord believes there was a small fire in the rental unit.

Analysis

As the tenth day to dispute the Notice was September 20, 2020 and the tenant filed this application on September 11, 2020, I find the tenant disputed it within the time frame of section 47(4) of the Act.

The onus is on the landlord to demonstrate they have ground to end the tenancy because the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk pursuant to section 47(d)(2)(ii) and (iii).

The landlord has presented evidence of the tenant's failure to keep the rental unit clean and the tenant's evidence indicates he does not keep the rental unit clean. Section 32(2) of the Act states: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

Residential Tenancy Branch Policy Guideline 01 states:

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The landlords have provided evidence that the tenant does not meet their standards for cleanliness nor the standards of their real estate agent or their contractor. There is no evidence of the breach of standards published by government or a regional health authority.

The tenant's failure to maintain the rental unit to the landlords' standards may represent a breach of section 32 of the Act, but the landlords have not proven on a balance of probabilities that the tenant's uncleanliness has seriously jeopardized the health and safety of the landlords or put the landlord's property at significant risk. A pest infestation in the rental unit was feared but there is no evidence it happened.

With regard to the risk of fire presented by the tenant, the tenant explained why he removed the battery of the old smoke detector and there is now a hard-wired device.

Based on the tenant's testimony and the previous landlord's statement, I find that, on a balance of probabilities, the March 2020 fire incident did not seriously jeopardize the health or safety of the landlord or put the landlord's property at serious risk.

I note the October 30, 2020 cooking incident can not be considered as part of the cause to end the tenancy because it happened after the Notice was served.

Thus, I find the landlords failed to prove, on a balance of probabilities, the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk. The Notice is cancelled and the tenancy will continue in accordance with the Act.

Conclusion

The One Month Notice dated September 09, 2020 is canceled and of no force or 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 *Residential Tenancy Act*.

Dated: November 18, 2020

Residential Tenancy Branch