Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes
For the tenant: CNL-4M, CNR; CNC; CNL; MNDCT; FFT
For the landlord: OPR-DR; MNRL-S; OPL; FFL; FFL

Introduction

The tenant filed an Application for Dispute Resolution (the "tenant's Application") , with amendments, as follows:

- November 7, 2020: a cancellation of the Four-Month Notice to End Tenancy for Demolition/Renovation/Conversion (the "Four-Month Notice"), issued by the landlord on October 26, 2020;
- December 4, 2020:
  - a cancellation of the One-Month Notice to End Tenancy for Cause (the "One-Month Notice"), issued by the landlord on November 30, 2020;
  - a cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice", issued by the landlord on December 2, 2020
- December 17, 2020: a cancellation of the 10-Day Notice (the "10-Day Notice #2") issued by the landlord on December 14, 2020;
- December 17, 2020: a cancellation of the Two-Month Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice") issued by the landlord on December 14, 2020
- January 13, 2021: compensation for monetary loss or other money owed;
- reimbursement of the tenant's Application filing fee.

The landlord filed their first Application for Dispute Resolution (the "landlord's Application #1") on December 23, 2020. They are seeking an order of possession of the rental unit for unpaid rent and the filing fee for this application.

The landlord's Application #1 was filed initially as a Direct Request. The matter proceeded by way of a participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The landlords filed their second Application for Dispute Resolution (the "landlords' Application #2") on December 24, 2020. They are seeking an order of possession for the rental unit, in line with the Four-Month Notice they issued for the landlord's use of the property. Additionally, they are seeking an order for monetary compensation for unpaid rent, holding the security deposit. They also seek to recover the filing fee for their Application.

These three applications are crossed due to the core subject matter of this tenancy. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 29, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

At the start of the hearing, both parties confirmed they received the evidence prepared by the other. The landlord provided copies of 'Proof of Service' documents to show this. The tenant stated they sent everything to the landlord via registered mail. With both parties' confirmation of full document disclosure in place, the hearing proceeded.

Preliminary Matters

At the start of the hearing I reviewed each of the documents issued by the landlord, each of them an official notice to end tenancy served to the tenant. The landlord issued the Four-Month Notice on October 26, 2020, with the reason indicated: to 'convert the rental unit to a non-residential use'. Two pages of this four-page document appear in the evidence provided by the tenant. An agent for the landlord in the hearing advised this Four-Month Notice is withdrawn; therefore, this portion of the tenant's claim – to cancel this Four-Month Notice – does not receive my consideration herein. This portion of the tenant's Application is thus dismissed. The tenancy will not end for this reason, with the Four-Month Notice being cancelled.

The tenant made a claim for monetary compensation more recently, as an amendment to the tenant's Application. This amendment was on January 21, 2020, approximately one week prior to the hearing.

In The landlord's Application #2, they applied a monetary recovery of rent amounts owing by the tenant. They applied to apply the security deposit amount held toward this amount owing.

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues',

and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the landlord.

The tenant's request for monetary compensation is dismissed with leave to re-apply.

The landlord's claim for recovery of rent amounts owing by offsetting the security deposit amount is dismissed with leave to re-apply.

Issue(s) to be Decided

A. Is the tenant entitled to an order that the landlord cancel the 10-Day Notice pursuant to s. 46 of the *Act*?

B. Is the tenant entitled to an order that the landlord cancel the One-Month Notice pursuant to s. 47 of the *Act*?

C. Is the tenant entitled to an order that the landlord cancel the Two-Month Notice, pursuant to s. 49 of the *Act*?

D. If the tenants are unsuccessful in seeking to cancel any of the notices, is the landlord entitled to an Order of Possession of the rental unit pursuant to s. 55(1) of the *Act*?

E. Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

F. Is the landlord entitled to reimbursement of the Application for either/both of landlord's Application #1 and landlord's Application #2, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord and tenant entered a tenancy agreement on March 16, 2017. This was for the tenancy starting on April 1, 2017. The agreement was for a fixed term initially and reverted to a month-to-month basis after that.

A. re: 10-Day Notice

The landlord presented that there was a payment plan carrying on with the tenant from 2019. This resulted from the landlord serving a previous 10-Day Notice due to the tenant having difficulty paying the rent. With the pandemic situation, there were missed payments by the tenant. According to the tenant, after this "when the owner wanted an order of possession, [the landlord] served another 10-Day Notice."

The tenant presented details on how they pay the monthly rent. This involves a cash payment left under a doormat. The landlord retrieves the payment and does not normally indicate to the tenant whether they retrieved the payment or not. The tenant stated that the landlord does not issue receipts and they do not receive receipts from the landlord showing that a payment was made. Rather, they put a "self-receipt" in each envelope with the cash payment. Examples of this are in the tenant's evidence.

The tenant provided copies of text messages they would send to the landlord. These show they notified the landlord, on an ongoing basis, of upcoming payments or amounts that were paid in the arranged system the parties had.

In the hearing the tenant presented that they messaged the landlord twice on November 30 to confirm when the landlord was coming to retrieve the payment on December 1. They called the landlord, with no answer. They were not comfortable putting "around $4,000" under the doormat at this time.

After this, the landlord issued the 10-Day Notice #1 on December 2. Then, on "December 3rd-4th" the tenant put the rent envelope out in the designated spot and assumed the landlord had picked it up. They did not text message the landlord at this time.

After this, there was an email from the landlord stating to the tenant that they did not pay. By this point, the rent was gone, so the conclusion was that the landlord had not picked it up. The tenant presented that the landlord stated clearly "no" that the rent was not picked up. From the tenant's perspective, the accusation is that the tenant is being untruthful.

Both parties submitted a copy of the 10-Day Notice #2 signed by the landlord on December 14, 2020. This gives the tenant move-out date of December 31, 2020. Page 2 of this copy shows the outstanding rent amount as $6,450 that was due on December 1, 2020. Page 2 also has the indication that the landlord served this document by sending a copy registered mail.

On their Application amendment dated December 4, 2020, the tenant provided that they received the 10-Day Notice #1, and indicated it was posted to the door of the rental unit on December 2, 2020. No copy of this 10-Day Notice #1 dated December 2, 2020 appears in the evidence of the tenant or the landlord. In the hearing, the landlord stated they served a 10-Day Notice to the tenant "in person."

The landlord included a copy of the 'Proof of Service' document that shows their December 14, 2020 mailing of the 10-Day Notice #2 to the tenant via registered mail. The landlord included a Canada post Receipt dated December 14, 2020 -- that contains the handwritten notation "10 Day Notice [tenant name]". In the tenant's Application amendment of December 17, 2020, they included a copy of this 10-Day Notice #2 bearing the December 14 date.

A separate document 'Proof of Service' shows the landlord served a 10-Day Notice at 10:48 a.m. on December 24, 2020. This was via registered mail for which the landlord provided a dated receipt showing December 24, 2020.

B. re: One-Month Notice

A copy of the One-Month Notice was submitted by the tenant as part of their evidence. The three-page document shows the landlord issued this on November 30, 2020. On page 2 the landlord indicated they served this document in person to the tenant.

On page 2 the landlord indicated the following as the reasons for issuing this document:

- □ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- □ Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

On page 3 of the document, the landlord provided the following details:

> tenant was given notice to remove commercial vehicles on Oct 26 2020 to be removed by Nov 11th 2020 then was granted an extension until November 30 2020 vehicles are against municipal bylaws & her tenancy agreement.

In the hearing, the landlord stated that this One-Month Notice served as a “warning letter”. They stated the vehicles were cleaned up, with only 4-5 vehicles remaining.

The landlords added they were satisfied that the reasons for issuing this One-Month Notice were rectified by the tenant, within the time parameters specified. They were satisfied of this “until the tenant made their monetary claim”. They stated they were not going to pursue this notice “unless [the tenant] is going to counterclaim with their monetary claim.”

The landlord provided an email from the third-party owner of the vehicles. The third party states “we have been paying [the tenant] monthly rent”.

In the hearing the tenant responded to this by stating some of the trucks in question were authorized by the landlord to a separate third party. From the tenant’s perspective the other trucks remaining were there with the authorization of the landlord, and when they attempted to follow through with the directive to move the trucks, the third party made threats of action. The tenant maintains they never accepted any money for these trucks to remain.

The tenant provided proof in the form of a text message from them to the landlord on November 30, 2020. This is to confirm with the landlord that they gave consent to the third party for the storage of the trucks. Approximately three hours later, they requested a response from the landlord on this discrete issue.

In sum, the tenant maintains all trucks other than those belonging to the third party have been removed from the property. The tenant’s assistant in the hearing stated that here the landlord was representing they did not know the third party; however, the evidence submitted clearly shows they do.

C. Two-Month Notice

The tenant provided a copy of this document in the evidence. The landlord issued this document on December 14, 2020, for the move date of February 28, 2021. On page 2 of the document, the landlord indicated the following reasons:

- □ The rental unit will be occupied by the landlord or the landlord’s close family member: the landlord or the landlord’s spouse
- □ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In the hearing, the landlord described they will take back the unit for personal use, for "quarantine" in the midst of a public health crisis. The landlord also stated "maybe I don't know how long . . . maybe 6 months, maybe 8 months. . ."

In response to this, the tenant presented their own knowledge of the landlord's plans to reclaim the property for commercial use. This is based on an appraiser's visit in September 2020. The landlord told the tenant directly the unit was going to be developed, so in the tenant's recollection ". . .all discussions [with the landlord] go to "I need it for commercial use".

Concerning the landlord's quarantine reason stated in the hearing, the tenant responded to say it is not conceivable that the landlord would move from their nice home to this rental unit for this purpose.

The tenant and their advocate also pointed to the consistent pattern of the landlord issuing notices to end the tenancy, meaning this particular Two-Month Notice is of questionable validity.

Analysis

For each of the issues concerning end-of-tenancy Notices, the landlord bears the onus of proof to show that each Notice is valid both in terms of its format and content, and the reasons for its issuance. For each Notice, the tenant had the opportunity in the hearing to respond to the landlord's submissions and evidence.

A. re: 10-Day Notice

The *Act* s. 46(1) provides that a landlord may end a tenancy if rent is unpaid on any day after its due date, with a notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Subsection (2) specifies that a notice must comply with s. 52 re: form and content of the document.

The *Act* s. 52 states:

> **52** In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a)be signed and dated by the landlord or tenant giving the notice,
>
> (b)give the address of the rental unit,
>
> (c)state the effective date of the notice,

(d). . . state the grounds for ending the tenancy,

. . .and

(e)when given by a landlord, be in the approved form.

Section 46(4) states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

The evidence here is the tenant amended their extant Application to add their request for cancellation of the 10-Day Notice #1 issued on December 2, 2020. This amendment was within 5 days as specified in s. 46(4). There is no copy of this document in either party's evidence. Given the considerations of s. 52, I cannot be satisfied of the validity of this Notice where no copy was provided by the landlord who bears the onus of proving its validity. The end-of-tenancy date is placed on the document as an essential piece of information – it is not known what end date was put on the document by the landlord. Further, I cannot verify the rental amount in question where a copy of the document is not provided. From the tenant's amendment to their Application I find it more likely than not that the landlord issued a 10-Day Notice to the tenant on December 2 – the landlord verified this in the hearing. However, with no copy before me, I cannot verify the information on its form and content, and so order this 10-Day Notice #1 cancelled.

The copy of the 10-Day Notice #2 in the evidence shows the date signed as December 14, 2020, and the ending date of the tenancy for December 31, 2020. I cannot determine whether this second notice specified the same end-of-tenancy date as the 10-Day Notice #1; therefore, this document's content is questionable on its validity. This raises the possibility that the tenant was given incorrect or contradictory information by the landlord. It is also not known whether the amount of rent in question was the same as indicated on the 10-Day Notice #1 issued approximately 2 weeks earlier.

In the hearing, the landlord did not adequately explain why they undertook to issue a second 10-Day Notice to the tenant, then sending it by registered mail. If it was intended to be a copy of the initial 10-Day Notice #1, that is not clearly presented in the evidence. If there are two separate 10-Day Notices issued to the tenant and the landlord has not met the burden to fully explain why they issued a second 10-Day Notice.

I cannot determine whether there are multiple copies of the same Notice for the same rent amount owing in existence. The landlord did not give sufficient evidence on the form and content – free of contraindications on other documents – to validate the issuance of this document to the tenant.

The landlord also provided a Proof of Service document that shows another service of a 10-Day Notice to the tenant on December 24 via registered mail. It is not known if this is a new separate 10-Day Notice (i.e., #3), or yet another service of the existing December 2 10-Day Notice #1, or a copy of the December 14 10-Day Notice #2. This Proof of Service further throws the form and content of the 10-Day Notice #2 in the evidence into question. Again, the landlord did not provide sufficient explanation of the issuing of one single 10-Day Notice to the tenant in December.

For this reason, both the 10-Day Notice #1 (evidence of which exists only on the tenant's Application amendment, not denied by the landlord) and the 10-Day Notice #2 (in which the content is unverified) are cancelled. I make this finding on the form and content of the form of such notice only, without an analysis of the validity of either parties' claims that the rent was or was not paid in December.

The landlord's Application for an order of possession on the basis of unpaid rent is dismissed, without leave to reapply.

B. re: One-Month Notice

In this matter, the onus is on the landlord to prove they have cause to tend the tenancy. I find the landlord has not met the burden of proof to show that this One-Month Notice is valid. Rather, I find they used this document as a means to enforce their direction to the tenant that vehicles on the property must be moved.

The *Act* s. 47(1)i) provides that a landlord may end a tenancy by giving a One-Month Notice to end the tenancy if the tenant "purports to . . . sublet the rental unit without first obtaining the landlord's written consent as required by section 34."

The *Act* s. 34(1) is explicit: "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

The landlord has not definitively proven there was subletting from the tenant to third parties. The landlord provided a message from the third party directly to them stating "we have been paying [the tenant] monthly rent"; however, I find the landlord sought this confirmation from the tenant only in answer to the tenant's monetary claim, that which I dismissed above. That is to say, this evidence to show the tenant was *definitively* renting was not in place at the time the landlord served the One-Month Notice on November 30, 2020.

Specific to subletting, the landlord has not provided evidence in the form of amounts of timing of payments or amounts to the tenant to show this is a situation of subletting. I am not satisfied from the evidence presented that this is a situation of subletting. The mail message from the third party is vague and not definitive with any rental arrangement that was in place with the tenant. For this reason, the evidence does not show the subletting issue on the One-Month notice is verified and valid.

The other reason indicated on the One-Month Notice concerns the breach of a material term. The landlord did not specify which term in the tenancy agreement the tenant is breaching. Nor did they provide evidence showing they clearly notified the tenant that the matter was a breach of a material term. Without this specific identification of the issue as such, and without evidence of a prior strict notification to the tenant of a material term breach, the One-Month Notice is not valid.

Additionally, I find the landlord did not intend to pursue this particular notice to end tenancy. This is based on the landlord's own statement to that effect in the hearing. With the tenant's later application for monetary compensation, this became a live issue for the landlord once again. This also invalidates the One-Month Notice. Ending a tenancy is not a situation where the validity of that important legally binding document is contingent on certain actions or inactions of the tenant after it was issued. The tenant seeking monetary compensation was not a basis for service of the document on November 30, 2020; nor should it be almost two months later at the time of this hearing.

For these reasons, the One-Month Notice issued by the landlord on November 30, 2020 is cancelled and of no force or effect.

C. Two-Month Notice

Based on the statements of the landlord on their reasons for issuing this document, I find the Two-Month Notice is not valid. The landlord did not present a firm plan for occupancy by themselves or any family member. Contracting an illness or exposure to conditions requiring a quarantine do not constitute valid reasons for indicating the landlord will occupy the unit. The nature of the landlord's work – being in the maintenance business – does not definitively raise the palpable risk of exposure. I consider the landlord's statements against what the firm wording on the notice provides for: a definitive plan that the unit will be occupied by the landlord or a family member. That is not what the landlord presents here.

Furthermore, there are contraindications on page two of the document. The landlord indicated both "by the landlord or the landlord's close family member – the landlord or the landlord's

spouse", in addition to "a person owning voting shares in the corporation, or a close family member of that person". This does not present a firm plan that the landlord intends to use the unit in good faith.

One other factor weighs heavily in my decision to cancel this Two-Month Notice: that of the series of previous notices to end the tenancy by the landlord, all within a relatively short timeframe at the end of 2020. I find this pattern lends credence to the notion that the landlord issued this Two-Month Notice in bad faith and for ulterior motives.

I order that this Two-Month Notice is cancelled. The landlord's Application for an order of possession on this basis is dismissed, without leave to reapply.

Because the tenant was successful in their Application, I find the tenant is entitled to recover the $100.00 filing fee they paid. I authorize the tenant to withhold the amount of $100.00 from one future rent payment.

The landlord was not successful in either of their two Applications. They are not eligible for reimbursement of either of the two filing fees they paid.

Conclusion

For the reasons above, I order each of the 10-Day Notice #1, the 10-Day Notice #2, the One-Month Notice, and the Two-Month Notice are 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: February 2, 2021

Residential Tenancy Branch