



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) 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 One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's monetary claim and repair request to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim and repair request is 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 to End Tenancy. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except cancellation of the notice to end tenancy.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, should the landlord be granted an order of possession?

Background and Evidence

The landlord testified that he served the tenants with a notice to end tenancy on February 27, 2021 with an effective date of March 31, 2021 for the following reasons:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) 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

The landlord testified the relationship between these tenants and the tenants in unit # 2 is “very toxic”. The landlord testified that FR was a tenant at one of his other properties and was a very good tenant but since moving to this location has been problematic. The landlord testified that the tenants have continually argued with each other requiring the police to attend at least 12 times in the past month.

The landlord testified that the tenants have also denied him access to the property to address rat problems and to address some issues that were recommended by the Fire Marshall. The landlord testified that the tenants also argue with each other that has caused him concern for their young children. The landlord testified that he believes the tenants damaged a reinforced perimeter door to the property. The landlord requests an order of possession.

The tenants gave the following testimony. FR testified that as per the landlord’s instructions, he locks the exterior entrance door to his side of the fourplex. The tenant testified that the tenants in unit #2 always yell at him for locking it. FR testified that he doesn’t understand why the tenants in that unit weren’t issued a notice to end tenancy as they are the cause of the problems and all the altercations. FR testified that the issues are due to the exterior entrance door.

HJ testified that access has not been denied to the landlord. HJ testified that the landlord never followed up or advised of his plans for any repairs. FR testified when he asked the landlord to fix the door, he was served an eviction notice the following day. The advocate submits that the tenants and the tenants in unit #2 have a contentious relationship but no charges have been laid against either tenant. The advocate submits

that the tenants are making efforts to find alternative housing but for the immediate future wish to stay.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the burden of providing sufficient evidence to support the issuance of the notice. It was quite evident that the subject tenants and the tenants in unit #2 have an acrimonious relationship. However, in the landlords own testimony he stated that the reason he issued the notice to the subject tenants instead of both sets of tenants was because he “believed” that they had damaged the door. The landlord made reference numerous times that the subject tenants damaged the door but was unable to provide sufficient evidence to satisfy me of that allegation. In addition, the landlord made numerous references to police attendance however, no charges have been laid or any police files presented for this hearing.

Furthermore, it is clear to me based on the testimony of the parties and in the landlord’s own testimony, he ignored the issues between the tenants and wasn’t present for any of the arguments between the two. As noted above, its clear that the subject tenants and the tenants in unit #2 do not get along, but that doesn’t equate to having this tenancy come to an end at this time. I find that the landlord has not provided sufficient evidence to satisfy me that this tenancy should end, on a balance of probabilities. I hereby cancel the One Month Notice to End Tenancy for Cause dated February 27, 2021 with an effective date of March 31, 2021.

Conclusion

The Notice to End Tenancy is cancelled, the tenancy continues. The tenants request for a monetary order and repair request is dismissed with leave to reapply.

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: June 10, 2021

Residential Tenancy Branch