Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The tenants filed an Application for Dispute Resolution on April 7, 2021 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). Additionally, they ask for the landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 10, 2021.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants, the landlords and landlords' counsel attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

At the start of the hearing, both parties confirmed their receipt of prepared submissions and documentary evidence of the other. On this basis, the hearing proceeded.

Preliminary Matters

The Applicant tenant here named each family member, including their two children, as Applicants in this hearing. I amend the style of cause to list only those two tenant names shown on the tenancy agreement. For ease throughout this decision, I refer to "tenant" and "landlord" referring to either separate party, collectively and/or individually.

The landlord issued the 10-Day Notice to the tenant on April 2, 2021. This was for the unpaid rent amount of $2,850 that was due on April 1, 2021. The landlord in the hearing presented that with the sale closing on April 15, 2021, the normal process was for the tenant to pay rent

to them as the then-current landlord on April 1. The transfer of the tenancy agreement, along with extant rent amounts, would be part of the completed sale.

The tenant did not pay rent, thinking a new landlord was coming mid-month, so they properly should pay the rent to that new landlord.

As a result of the sale of the rental unit property, the landlord-tenant relationship here ended on April 15, 2021. The tenant has a new landlord as of that date and has been paying rent to that landlord going forward.

In the hearing, the landlord here stated they have no interest in the tenancy, or its possible termination in line with the 10-Day Notice. They raised no objection to a cancellation of the 10-Day Notice. The tenant accepted that the tenancy could continue. In line with this, I order the 10-Day Notice issued to the tenant on April 2, 2021 is of no force and effect. The tenancy shall continue.

In the hearing, the tenant maintained they already informed the landlord here that they would pay them directly for the one-half month rent. In the hearing, the tenant stated they "just wanted to know why the landlord served the eviction notice".

The tenant in their documentary evidence showed that they paid the remainder for April rent to the incoming new landlord. This was an email to the tenant from the new landlord on April 15, requesting the remaining 16 days' rent for April, for $1,520. The tenant presented in the hearing that they paid this amount to the landlord.

In the hearing, the tenant agreed to pay the balance owing to the landlord. This was for the remaining 14 days' rent, for the amount of $2,850/30 * 14 = $1,330.

In fairness to the landlord, I find they were without rent payment in the month of April. Moreover, they presented evidence that this non-payment of rent threatened completion of the sale of the rental unit. At all points they advised the tenant to contact the Residential Tenancy Branch to learn of the sale of the property which had no impact to their rights as a tenant. Further, the landlord presented a credible account that they ensured the tenant here would not face eviction as a result of the sale and completed the sale with a purchaser who would accept the transfer of this tenancy.

Given these factors, I order the tenant to pay recompense to the landlord for the entire 15-day period from April 1, to April 15. I provide a Monetary Order to the landlord for this amount, $1,425.

The tenant filed the Application on April 7, 2021 also seeking the landlord's compliance with the *Act*, the regulations, and/or the tenancy agreement. This involves a call to the tenant from a stranger who informed the tenants that the sale was complete, with the landlord granting two months' free rent to the tenants. Also, a team involved in the sale "unlocked the front door and entered the rental house without permission request or approval." For the tenant, this means the landlord did not follow the proper procedure for showing the home.

Given that the tenancy has ended, I find it unfeasible to order that the landlord shall comply with the legislation and/or tenancy agreement going forward. The landlord-tenant relationship has ended; therefore, neither the tenancy agreement nor the *Act* govern the relationship between the parties going forward. For this fundamental reason, I dismiss the tenant's Application for the landlord's compliance, without leave to reapply.

The tenant additionally claims for compensation where the landlord "infringed the tenant's legal right to peace and quiet." This piece involves the sale process of the property, with numerous showings and other communication. They specified the three-month period of the sale and marketing of the property, asking for compensation.

I amend the tenant's Application to reflect the nature of their claim for compensation here. This is despite the tenant's failure to amend their Application in advance as prescribed in the *Residential Tenancy Branch Rules of Procedure*. That issue and the the Application filing fee are the remaining issues in this process, listed below.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for Damage or Compensation under the *Act*, pursuant to s. 67 of the *Act*?

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

Background and Evidence

The tenant applies for compensation for the interruption to quiet enjoyment of the rental unit during the period in which the landlord was securing a sale of the property. The tenant initially made their Application in this matter concerning the end-of-tenancy notice on April 7, 2021. As

part of their prepared documentation, the tenant made their “Compensation Request” dated April 11, 2021. This included a list of experiences that the tenant felt infringed their legal right to peace and quiet while the tenancy continued: the unauthorized call and visit from persons unknown; 11 home showing requests, one of which they deemed “forced”; and 81 separate messages from the landlord and sales representative, with 53 replies from the tenant.

In an update to their submissions on May 16, the tenant listed 88 text messages, with 59 responses. The tenant also cited interactions in April 2021, after their Application here, with messages from the landlord amounting to “threatening emails sent urging reconsideration.” They provided this email dated April 13 wherein the landlord informed the tenant of the impact their non-payment of April rent was having on the completion of the sale.

The tenant presents that this caused great stress. The home showings meant that there was extra cleaning by the tenant “so that the rental house would look neat and organized.” They estimate there was 20 hours of time spent corresponding with the landlord on scheduling visits.

The tenant concluded, because of these ongoing “text message communications, emails and cleaning, vacating the house for visitors”, the value of the rental unit decreased to 50% of the value stated in the tenancy agreement. For the three-month timeframe involved, the tenant asks for $1,425 per month, 50% of the rental amount, for the total amount of $4,275.

For their prepared evidence, the tenant prepared samples from text messages with the landlord in advance of a typical visit. A response from the landlord in the evidence dated February 13 shows the landlord stating: “I understand it’s not easy on your family, and hopefully other than one final walk through if the sale completes, this will be the last time . . .”

In their formal response to the tenant’s Application, the landlord provided that all correspondence with the tenant “was done with the utmost respect and to accommodate their schedules as much as possible.” They maintained that they always complied with notice to the tenant in advance, and to minimize disruption by working with the tenant’s schedule.

The landlord also reiterated their effort from the outset of the sale process to ensure the tenant could remain at the rental unit, despite the legitimate legal avenue to end the tenancy with two months’ notice because of the sale. The landlord maintains they have been transparent in the whole sale process and acted in good faith throughout.

The landlord’s evidence includes emails with the tenant from January 2021. In one message the landlord sets out their rights with respect to “selling a tenanted property.” The landlord also provided a copy of their message directly to a realtor representative to inform the sales staff of

the need to be “as least disruptive as possible” and establishing a direct link between the representative and the tenant. The messages also show the landlord and representative discussing the tenant’s request to communicate directly with the purchaser, in advance of the completion of the sale.

Analysis

The *Act* s. 28 covers a tenant’s right to quiet enjoyment. This provides for “freedom from unreasonable disturbance”, and “exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29”.

Following this, s. 29 provides that a landlord must not enter a rental unit for any purpose, unless there is “[with] at least 24 hours . . . the landlord gives the tenant written notice that includes (i) the purpose for entering, which must be reasonable; (ii) the date and time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.”

Governing a party’s request for compensation more broadly, under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The tenant makes their claim for compensation by setting an amount at one-half of the monthly rent amount, over the period of three months during the undertaking of the sale. The tenant framed this claim as a loss in value of the rental unit, where it “lost its function as a home to provide a peaceful and quiet shelter.” To examine this question, I take into consideration the seriousness of the situation or the degree to which the tenant was unable to use or was deprived of their right to quiet enjoyment, as well as the length of time over which the situation existed.

I find there was no loss to the tenant resulting from a violation of their right to quiet enjoyment, as per s. 28. In the list of dates the tenant lists “requests” that were either accepted or rejected. I conclude that home showings or the single home inspection were not imposed or otherwise forced on the tenant. There is no evidence the visits were imposed without due regard for the tenant’s own availability.

Further, there is no evidence of an interruption to the tenant’s own free access to the rental unit. There is no record of the tenant being asked to leave temporarily for the purpose of a visit, or otherwise be away from the rental unit for any aspect of the sale. In this regard, I find the tenant was not at any time unable to use the rental unit fully. Further, I find there was no loss to quiet enjoyment where the visits were *requests* and the emails and other messages show the tenant’s free ability to provide alternate times to make the visits work for them.

The tenant alluded to the need for cleaning because of visits. They did not describe this fully or give sufficient detail on this aspect of their claim. Because of this lack of fulsome explanation, I cannot conclude there was significant effort involved for them. Moreover, there is no evidence the landlord made forced cleaning requirements or made other requests other than arranging visit times with the tenant’s full participation. This was not a situation where the landlord showed up unannounced with the expectation that visitors could enter; rather, in each instance, advance notice in the form of a request came directly to the tenant from the landlord. In this regard I accept the landlord’s position that communication was transparent throughout.

Similar to the tenant not describing the process, I find they did not present the length of time for the typical home showing or inspection. I conclude there were no protracted or expanded showing efforts imposed by the landlord.

I also find the frequency and number of text messages does not show significant loss of quiet enjoyment. I find the frequent of messages was more in the spirit of the landlord keeping the tenant fully informed on all steps of the process, as well as the tenant’s own queries to both the landlord and the sales representative.

The tenant presented one example of a phone call they received from someone unknown to them, as well as an intrusive visit by sales staff. I find these are anomalies which the landlord acknowledged. I find the evidence shows the phone call was an attempt at minimizing the impact the notion of the sale was having on the tenant. Were these ongoing occurrences, they may constitute a breach of the right to quiet enjoyment; however, being single occurrences, while they may contribute to the tenant’s inconvenience I find they are anomalies, with one

being a plain error, and the other being an attempt by the landlord to build bridges in this situation.

I find there was no breach of the *Act* by the landlord here. I also find the tenant did not mitigate the loss by presenting their claim in terms of actual timing of visits. I find the one-half monthly rent amount claimed is disproportionate to what the tenant presents in terms of frequent visits with advance notice by the landlord each time.

In sum, I find there was no damage or loss to the tenant that resulted from a violation of the *Act* or the tenancy agreement by the landlord. There was no breach of the tenant's right to quiet enjoyment of the rental unit.

Conclusion

The 10-Day Notice issued on April 2, 2021 is cancelled, and of no force or effect.

I order the tenant to pay the landlord the amount of $1,425.00. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) where it can be enforced as an order of that court.

The tenant's claim for monetary compensation is dismissed, without leave to reapply. Similarly, their claim for the Application filing fee is dismissed without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 11, 2021

Residential Tenancy Branch