



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Presidential management ltd and Sandy creek
property management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, CNC, OLC, MNDCT, MNRT, DRI, RR, PSF, FFT

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 tenants applied for:

- an order requiring the landlord to carry out repairs, pursuant to section 32;
- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- a monetary order for the cost of emergency repairs, under to sections 33 and 67;
- an order to dispute a rental increase, pursuant to section 43;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:16 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord Presidential Management Ltd, represented by property managers SB and LA (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

Preliminary Issue – Amendment to remove respondent Sandy Creek Property Management

The landlord affirmed that Presidential Management Ltd. succeeded Sandy Creek Property Management.

Section 1 of the Act defines tenancy agreement as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit”.

Based on the landlord’s testimony, I find Sandy Creek Property Management is not the landlord, as it was succeeded by Presidential Management Ltd.

Accordingly, pursuant to section 64(3)(a) and (c), I amend the application to remove Sandy Creek Property Management as respondent.

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing on May 04, 2021. The landlord affirmed she did not receive evidence.

The landlord testified she served the response evidence to both tenants in a package mailed to the rental unit on August 06, 2021.

Section 89 of the Act states:

- (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
 - (a)by leaving a copy with the person;
 - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

(a)by leaving a copy with the tenant;

(b)by sending a copy by registered mail to the address at which the tenant resides;

(c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

Based on the landlord's testimony, I find the tenants served the notice of hearing in accordance with the Act.

Based on the landlord's testimony, I find the landlord did not serve the response evidence in accordance with the Act, as both tenants were served together. As noted above, each party must be served the evidence. The evidence submitted by the landlord is not accepted.

I note that section 55 of the Act requires that when a tenant submits an application for Dispute Resolution 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 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 to end tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' 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 of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Are the tenants entitled to:

1. cancellation of the Notice?
2. an authorization to recover the filing fee?

If the tenants' application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord stated the tenancy started on December 16, 2019. Monthly rent is \$1,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 and a pet damage deposit of \$600.00 were collected and the landlord holds them in trust.

The landlord testified she attached the Notice to the rental unit's front door on April 13, 2021. This application was submitted on April 16, 2021. The tenants continue to occupy the rental unit.

The landlord said the tenants are continuously paying rent late and that the tenants are responsible for loud noise between 10:00 PM and 6:00 AM.

Analysis

Based on the landlord's convincing testimony, I deem the tenants served with the Notice on April 16, 2021, per section 90(c) of the Act.

Section 47(4) allows the tenant to dispute the Notice within 10 days after the date the tenant received it. As this application was submitted on April 16, 2021, I find the tenants disputed the Notice within the timeframe of section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

Section 52 of the Act states:

- 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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

As a copy of the Notice was not accepted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. The landlord must submit a copy of the Notice so the arbitrator can confirm its compliance with section 52 of the Act.

Accordingly, I cancel the Notice served by the landlord on April 13, 2021.

I note that I am not making any findings about the merits of the Notice.

As the tenants were successful in this application, pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

Conclusion

The Notice served on April 13, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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: August 24, 2021

Residential Tenancy Branch