Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, RP, OLC, FFT, RR / CNC, FFT, RR, RP**

Introduction

This hearing dealt with two applications of the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**"). The first (file # 310035171**,** filed with the Residential Tenancy Branch (the "**RTB**") on April 14, 2021) for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $7,533 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

And the second (file # 310036681, filed with the RTB on May 6, 2021), for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Prior Hearings

The parties have appeared before the RTB on two prior applications of the tenants:

1) On April 13, 2021 for an order disputed a different one-month notice, for repairs, to restrict the landlord's right to enter the rental unit, and for an order that the landlord comply with the Act (File # 310026844, filed with the RTB on January 12, 2021); and
2) On April 29, 2021 for an order that emergency repairs be made (File # 310033849, filed with the RTB on April 7, 2021)

At the April 13, 2021 hearing, the presiding arbitrator severed the tenants' application to dispute the one-month notice from the other claims (which were dismissed with leave to

reapply), pursuant to RTB Rule of Procedure 2.3. The tenant was successful at this hearing, and the one-month notice at issue was cancelled.

The tenant was also successful at the April 29, 2021 hearing, where the presiding arbitrator wrote:

> 1. I order the Landlord to have at least temporary repairs made to the roof to ensure no interior leaks by no later than May 7, 2021; and
> 2. I order the Landlord to complete the repairs to the roof no later than May 31, 2021.
>
> Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation for the loss in the value of the tenancy from the date the leak commenced.

I understand that the monetary compensation sought by the tenants mentioned above is rooted in this claim.

Attendance

Tenants SM and MF attended the hearing. They were represented by counsel ("**DW**"). The landlord was represented by its director ("**AK**") and her assistant ("**DN**"). 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

SM testified, and AK confirmed, that the tenants had served the landlord with the notices of dispute resolution proceeding packages and supporting evidence for both application. I find that these documents have been served in accordance with the Act.

AK testified that the landlord served the tenants with the landlord's documentary evidence one day before the hearing.

RTB Rule of Procedure 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
>
> [emphasis added]

AK testified that she was unaware of this rule, and understood that if the documents were served personally, that they would be served in accordance with the Rules.

This is not the case. Under the Act, if documents are served on a party personally, they are considered served on the day they were given (as opposed to three days or five days after, if they were posted on the door of a rental unit or sent by registered mail, for example). However, this does not mean that the timeline in Rule 3.15 can be ignored. The tenants are entitled to sufficient time to review the landlord's documentary evidence prior to the hearing, so they can prepare their response submissions.

AK did not provide any reason why the landlord's documents could not have been served seven days prior to the hearing. She merely stated that she had misunderstood the requirements for service. This is not a basis to admit evidence late, as considered by Rule 3.17.

Accordingly, I excluded all of the landlord's documentary evidence. AK and DV were permitted to give testimony relating to the contents of the documents at the hearing.

Preliminary Issue – Severing of Claim

At the outset of the hearing, I advised the parties that these applications only had one hour to be heard. Additionally, their subject matter covers a range of topics. I suggested to the parties that, in order to make sure that the hearing concludes within the allotted time, only the most pressing of the relief sought be addressed at the hearing, and that I would sever the other parts of the tenants' applications, so that they could be brought again. I suggested to the tenants that the most pressing of the issues was whether the tenancy could continue (that is, their application to cancel the Notice). DW agreed with this assessment.

Rule 2.3 states:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenants' claims are not sufficiently related to one another that would require them to be heard together. As such, I dismiss all parts of the tenants' applications, with leave to reapply, except for their application to cancel the Notice and their application to retain one of the filing fees.

Issues to be Decided

Are the tenants entitled to:

1) an order cancelling the Notice;
2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the rental unit entered into a written tenancy agreement starting November 1, 2020. Monthly rent is $4,100 and is payable on the first of each month. The tenant paid the prior owner security deposit of $2,050 and a pet damage deposit of $2,050. The landlord purchased the rental unit on December 22, 2020. The prior owner assigned the tenancy agreement to the landlord and transferred it the deposits. The landlord continues to hold the deposits in trust for the tenants.

The landlords issued the notice on April 28, 2021. They posted it on the door of the rental unit. The notice indicated an effective date of May 31, 2021. Instead of the reason for ending the tenancy as

> Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided further details of this on the notice as follows:

> The tenant has unreasonably and repeatedly disturbed landlord with numerous requests through texts and emails and phone calls. Monthly meetings with RTB.

AK testified that within a week and a half of her assuming ownership of the rental unit SM was sending her emails complaining about various issues with the rental unit and alleging that these issues had existed for 70 days. AK testified that she responded that she had just assumed ownership of the rental unit and had not been aware of these issues until SM raised them to her. She testified that she fixed those issues which she deemed to be urgent but did not repair those non-urgent things.

AK testified that on December 29, 2020 he conducted an inspection of the rental unit with SM. She testified that SM brought issues to her attention during this walkthrough which he said he had previously raised to the prior owner. These included the stove not working properly, the refrigerator not making ice, and the front door of the house not opening properly. She stated about the stove wasn't working properly because it needed to be cleaned, that the fridge not making any ice was not a significant issue, contrary to SM's assertion that it was a "severe issue", and that the front door of the house opened "fine", while at the same time acknowledging it was a bit difficult to open. AK testified that she told the tenants that the rental unit was a 68-year-old house and some of these issues were to be expected.

AK testified that the prior owner retained a company to patch the roof, but this patch was not sufficient. She testified that she attempted to have this roofing company come back but multiple occasions in January 2021 but they never attended.

On January 11, 2021, SK wrote the roofing company an email expressing her dissatisfaction with their service. This email caused the roofing company to attend the rental unit, but, once they attended, they said that they would not make further repairs to the roof.

AK testified that she was attempting to secure another roofing company.

AK testified that the types of communications sent by the tenant to her were of several different categories:

1) Communications relating to repairs to the rental unit (several times);
2) Requests from the tenant to invest in his company (one time);
3) Inquiries as to whether or not the landlord was going to sell the property (“numerous times”); and
4) Demands for the production of land title searches to show the landlord was indeed the owner of the rental unit.

Additionally, AK testified that SM would change the etransfer password each month. DN repeatedly corresponded with SM, him to use the same password each month.

AK testified that she is a dental student, and that the tenants would often call her while she was studying or in class. The volume of calls she testified she received for such that she asked her assistant to deal with the tenants.

DN testified that she received over 40 to 50 emails from SM, as well as numerous phone calls. She testified that she sometimes receives these when she is driving or otherwise unable to answer the phone, so she does not answer them. She also testified that after she deals with one of the issues that the tenants have raised, she does not answer the tenants’ calls, because she knows that they will just be raising with problems that she has already solved for them.

The tenants denied that their communication caused an unreasonable disturbance to the landlord. They argued that any calls relating to the repairs of the rental unit were not unreasonable, as there are deficiencies with the rental unit which still need to be addressed. DW argued that any calls relating to the roof should not be considered to have been unreasonable, as in May 2021 an arbitrator found about the landlord had not repaired the roof as it was obligated to, in ordered it she do so.

Additionally, the tenants disagreed with the landlord's characterization of the repairs refrigerator needed. They testified there were exposed wires in the back interior of the

refrigerator which posed a hazard. SM also testified that the landlord failed to repair exterior lighting along the driveway, which posed a safety risk to the tenants.

SM admitted to asking AK on one occasion if she wanted to invest in his business. He stated that when they first met, AK asked what he did for a living, and that he told her. He testified that she mentioned that her husband might be interested in investing in the business. SM testified that he followed up on this inquiry, but when AK told him she was not interested, he stopped communicating with her.

The tenant denied changing the etransfer password every month. He stated he uses the same password every time.

DW argued that, if the DN was not taking the tenants' phone calls after addressing an issue, that she could not be sure that no further issues needed to be addressed.

The tenants agreed they asked the landlord for land title search, as the prior owners of the rental unit did not advise them who the rental unit had been sold to. They wanted to confirm that the people who had presented themselves as the new owners of the rental unit, and demanded payment of rent, were in fact the people who they purported to be. And testified that once the landlord's realtor provided them with the requested information, they stopped asking for it.

The tenants testified that the landlord conducted several showings to sell the rental unit in May 2021, and that they fully cooperated with all of these showings. The landlord testified that they have now decided not to sell the rental unit. The tenants did not deny that they asked the landlord if they intended to sell the rental unit on multiple occasions.

Tenants testified that landlords have served them with four separate notices to end tenancy, the most recent of which was received in August 2021. They testified that the landlord is engaging in pattern harassment, which is depriving them of their ability to live in the rental unit undisturbed. I advised the tenants that this issue is outside the scope of this application but may be fodder for a future application.

Analysis

Section 47(1) of the Act states:

> **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,

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord bears the onus to prove it is more likely than not that the conduct of the tenants rose to the level of *significant* inference or *unreasonable* disturbance.

Based on the evidence presented at the hearing, I find that the conduct of the tenants falls far short of either of these standards. I will address each type of categories of communications from the tenants the landlord alleges warrant the tenancy to be ended:

1. Communications relating to repairs to the rental unit

I do not find that communication from the tenants in the furtherance of having the landlord make repairs which they are obligated to make under the Act to be an interference or a disturbance. There is insufficient evidence before me to determine if the repairs demanded by the tenants were repairs that the landlord was required to make. The landlord bears the onus to prove that they are not.

Additionally, I do not find the volume of calls, emails, or text messages from the tenants to be unreasonable, in light of DV's testimony that she would often ignore SM's calls after the landlord had fixed a problem. DV has no way of knowing what SM might be calling about. It may be the repair made was insufficient. The call may be related to a different repair that is needed. Without answering the phone, DV has no way of knowing. This practice of avoiding the tenants' calls no doubt contributed to the volume of calls made by the tenants.

Furthermore, the fact that the AK or DV might be otherwise engaged at the time of the tenants' calls does not mean that the tenants calls are an unreasonable disturbance. There is no evidence before me that AK or DV advised the tenants as to what times they were available to take their calls, or what times they would be unable to take them. Absent such a schedule (so long as the schedule provided reasonable opportunity for the tenants to contact the landlord's agents) and evidence the tenants failed to comply with it, I decline to find that any phone calls made to AK or DV while they were in class, driving, studying, or any engaged in any other activity, amount to an unreasonable disturbance or significant interference

2. Requests from the tenant to invest in his company

I accept SM's testimony that he asked AK if she or her husband would want to invest in his business only after AK suggested they might be. Further, I accept his evidence that, once she indicated that they were not interested, he stopped asking. I do not find such an inquiry to be inappropriate or a breach of the Act. Had the conduct continued after AK declined, I might have found differently. However, on AK's own evidence, SM only made such an inquiry once. As such, the conduct does not amount to a breach of the Act.

3. Inquiries as to whether or not the landlord was going to sell the property

I am unsure how many times the tenants asked the landlords if they were going to sell the rental unit or when these inquiries were made. However, I understand that the landlords conducted showings of the rental unit in May 2021, and then took the rental unit off the market. It is not unreasonable to think that such a course of action would cause confusion in the tenants.

In such a situation, it is natural for the tenants to seek clarity. Showing a rental unit for sale places a great deal of pressure and inconvenience not only on a landlord but also on a tenant residing in the rental unit. They may want to keep the rental unit in a presentable condition, schedule their activities so they either are or are not present during the showings (depending on the arrangement with the landlord, or their preferences). They may also want to start looking to see if other rental units are available for them to move to.

If there was any question in the tenants' mind as to whether the rental unit would be sold or not, it is only natural that they would make inquiries. I cannot say as to what the landlord's responses were to the tenants' inquiries as to whether or not the landlord would sell the property. Neither AK nor DV provided any information on the subject. As such, I do not find that these inquiries rose to a level warranting ending the tenancy.

4. Demands for the production of land title searches

I do not find that the tenants request for documents evidencing the landlord's ownership of the rental unit to be unreasonable. Indeed, if they were not provided such information by their outgoing landlord, the requests for these documents are entirely prudent. It is not unreasonable for them not to want to rely on the word of somebody purporting to be their new landlord absent corroborating evidence.

I do not find that such requests rise to the level that would warrant ending the tenancy.

5. Changing the etransfer password

The parties have provided conflicting evidence as to whether or not SM changed the etransfer password on a monthly basis. I make not determination as to whether such conduct could be considered an “unreasonable disturbance” or a “significant interference” under the Act. I find that absent any corroborating evidence from the landlord, the landlord has failed to discharge their evidentiary burden to prove it is more likely than not that the tenants acted as they allege.

6. Monthly RTB hearings

The landlord also listed “monthly meetings with RTB” as a reason for ending the tenancy. I have recounted the history between the parties at the RTB above. As noted, there have been two prior RTB hearings, and the tenant has been successful at both.

As such, I do not find that there were “monthly meetings with the RTB” or that the hearings that did occur amount to an unreasonable disturbance. Indeed, as the tenants were successful at both hearings it would seem that they were entirely reasonable in making the applications.

This is not a reason that a tenancy can be ended.

Pursuant to section 72(1) of the Act, as the tenants has been successful in the application to cancel the Notice, they may recover their filing fee for that application ($100). Pursuant to section 72(2) of the Act, the tenant may deduct $100 from one future month’s rent in satisfaction of this amount.

Conclusion

The Notice is cancelled and of no force or effect. The tenancy shall continue.

The tenants may deduct $100 from one future months’ rent representing the reimbursement of their filing fee for their application to cancel the Notice.

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 27, 2021

Residential Tenancy Branch