



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDCT, RR, OLC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for a rent reduction; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;

The male Tenant stated that on May 21, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2021 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On August 26, 2021 the Tenants submitted additional evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, on August 26, 2021. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In August of 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 01, 2021. The male Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

The Landlord is the property owner's daughter. She advised that her father is not fluent in English and she spoke on his behalf during the hearing.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find the most urgent issue in dispute is the continued possession of the rental unit. I will therefore consider the Tenants' application to cancel the One Month Notice to End Tenancy for Cause. I will also consider whether the Tenants are entitled to compensation related to service of the One Month Notice to End Tenancy for Cause, as such an award is directly related to service of that Notice to End Tenancy.

All other issues in dispute in the Application for Dispute Resolution are dismissed, with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside?

Are the Tenants entitled to compensation as a result of being served with a One Month Notice to End Tenancy for Cause?

Background and Evidence

The Landlord and the Tenants agree that:

- This tenancy began on June 15, 2020, although the written tenancy agreement indicates it began on July 01, 2020;
- Rent is due by the first day of each month;
- On April 28, 2021 the male Tenant was personally served with the One Month Notice to End Tenancy for Cause that is the subject of these proceedings;
- The One Month Notice to End Tenancy for Cause, dated April 28, 2021, declares that the Tenants must vacate the unit by May 31, 2021;
- The One Month Notice to End Tenancy for Cause declares the tenancy is ending because the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and
- In the details portion of the One Month Notice to End Tenancy for Cause the Landlord declares that the tenancy is ending because the Tenant is unreasonably disturbing the Landlord and placing the property at risk.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because:

- on July 02, 2021 her parents, who live in the upper portion of the unit, were using an air conditioner which tripped one of the circuit breakers;
- the electrical panel is in the rental unit;
- the male Tenant would not initially permit anyone to enter the rental unit for the purposes of re-setting the breaker;
- the Landlord contacted the police and the male Tenant agreed to re-set the breaker after discussing the issue with the police over the telephone;
- on July 03, 2021 the breaker tripped again;
- the male Tenant allowed her brother-in-law to re-set the breaker;
- when her brother-in-law re-set the breaker, he noticed that the breaker was fully off, rather than ½ way off which typically occurs when the breaker is tripped;
- her brother-in-law concluded that the breaker has been manually turned off because it was “fully off”;
- her brother-in-law told the male Tenant to leave the breaker alone.

In response to the issue with the breaker, the male Tenant stated that:

- the breaker tripped on July 28, 2021, not July 02, 2021;
- the Landlord’s sister asked him to re-set the breaker, which he did;
- a few hours later the breaker tripped again and two men came banging on his door, although they said nothing;
- he contacted 911 as a result of the men banging on his door;

- a police officer spoke to him over the telephone, at which time he agreed to allow an electrician into his unit to re-set the breaker;
- he subsequently allowed the Landlord's brother-in-law into the unit;
- he does not know if the brother-in-law re-set the breaker;
- as far as he is aware, the breaker did not trip a third time; and
- he did not intentionally turn off the breaker.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because:

- her parents noticed there was no hot water for five consecutive mornings in May of 2021;
- she contacted a plumber who inspected the hot water tank and determined it was functioning properly;
- the plumber provided her with an inspection report, which was submitted in evidence;
- she spoke with the male Tenant about the plumber's inspection report; and
- the problem did not re-occur.

In response to the issue with the hot water, the male Tenant stated that:

- he does not know why there was a lack of hot water; and
- the Tenants did not intentionally drain the hot water tank.

In the plumbing report the plumber determined that the hot water tank was functioning properly; the tank should provide hot water continuously for 12-15 minutes; there was nothing to indicate the hot water tank had been tampered with; and that the hot water was likely being overused, "possibly maliciously or intentionally".

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the male Tenant reported her parents to the authorities for allegedly breaching COVID regulations and watering restrictions.

The male Tenant stated that reported the Landlord's parents to the authorities on one occasion because he believed they were contravening COVID regulations and on another occasion because he believed they were contravening watering restrictions.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because:

- in January of 2021 she noticed the Tenants were keeping their windows open while the heat in the unit was excessively warm;

- on February 23, 2021 she directed the Tenants to keep the windows closed when they have the heat on;
- the Tenants continued to heat the rental unit while keeping windows open;
- windows in the unit are almost always open;
- she spoke with the male Tenant regarding the heat on several occasions in April and May of 2021;
- heat is included with the rent; and
- heating costs have risen by 68% since the start of the tenancy.

In response to the issue with the heat the male Tenant stated that:

- heat is included with the rent;
- the issue with the heat was raised in an email sent on February 23, 2021;
- the issue with the heat was never discussed after February 23, 2021;
- he generally keeps the windows closed; and
- in the winter he opens his bedroom window approximately 1"- 2" for approximately 15 minutes on 2 or 3 occasions each week.

The Landlord submitted an email she sent to the male Tenant, dated February 22, 2021, in which she advises him to not open his windows when the heat is on; she declares that if the windows continue to be left open she will charge him 45% of the hydro costs or give him a notice to end tenancy.

The Landlord submitted the male Tenant's response to the above email, dated February 23, 2021. In his response the male Tenant stated that he occasionally opens his bedroom window by 1"- 2", for a "short period", for the purposes of obtaining fresh air. He noted that the Landlord's father also opens a window on occasion. He advises that he is mindful of preserving heat; that he keeps the windows closed during low temperatures; and he thinks it is reasonable to open a window to obtain fresh air, provided it is not for "extended periods".

The Landlord submitted an email she sent to the Tenants, dated July 02, 2020, in which she advises the heat from the rental unit is increasing the temperature in her parent's living space and that she does not believe the heat should be left on during the summer months. The male Tenant responded to this email stating that his mother turns on the heat because she is cold; that she likes it warmer than he does; and that they have turned down the thermostat.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because:

- the Tenants have been harassing her parents since the Landlord sent the email dated February 23, 2021;
- the harassment is affecting the health and well being of her parents, who are 84 years of age;
- the Tenants have been harassing her parents by phoning them in the early morning hours and hanging up;
- there have been a series of unusual, loud noises at the time and dates noted on exhibit L-15;
- a fish head was found on her parents deck, which the Tenants can access by climbing a set of exterior stairs;
- there is a chemical substance, which she believes is urine, has been sprayed on her parent's deck and on the exterior of the home;
- no substances were deposited after she installed security cameras in June of 2021;
- she has contacted the Tenants' former landlord who reported similar forms of harassment at the Tenants' previous rental unit; and
- the former landlord would not provide evidence for these proceedings.

In response to the allegations of harassment, the male Tenant submits that:

- the allegations of harassment are complete fabrications;
- they do not know the Landlord's parent's phone number and have not been phoning them;
- there have been no unusually loud noises emanating from the rental unit; and
- they did not leave a fish head, a chemical substance, or any other substance on the Landlord's parent's deck.

At the conclusion of the hearing the Landlord was asked if she wished to discuss additional reasons for ending the tenancy, and she indicated that she had no further submissions.

Analysis

Section 47(1)(d) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or put the landlord's property at significant risk.

On the basis of the undisputed evidence, I find that the One Month Notice to End Tenancy for Cause, dated April 28, 2021, was personally served to the male Tenant.

On the basis of the information in the details portion of the One Month Notice to End Tenancy for Cause, I find that the Landlord informed the Tenants that the tenancy was ending pursuant to section 47(1)(d) of the *Act*. When a tenant disputes a One Month Notice to End Tenancy for Cause, the landlord bears the burden of proving they have grounds to end the tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants acted inappropriately when the breaker was tripped in June or July of this year. In reaching this conclusion, I find the Landlord submitted insufficient evidence to corroborate her submission that the male Tenant prevented the circuit breaker from being re-set after it was first tripped or that refutes the Tenant's testimony that he re-set the breaker after being asked to do so by the Landlord's sister.

On the basis of the undisputed evidence, I find that the breaker tripped a second time and that the Tenant did not allow anyone to enter the unit to re-set the breaker until after he spoke with the police on the telephone. I do not find this to be particularly unreasonable, given the Tenant's testimony that men were banging on his door, which is corroborated by his email of June 28, 2021. I therefore find that the Landlord does not have grounds to end the tenancy on the basis of any delay in re-setting the breaker.

I find that the Landlord has submitted no evidence to corroborate her suspicion that the Tenant intentionally turned off a circuit breaker. I note that there was no evidence submitted to corroborate the Landlord's submission that when her brother-in-law re-set the breaker on the second occasion, he noticed that the breaker was fully off. I also note there was no evidence submitted that corroborates her submission that when a breaker is fully off it is indicative of the breaker being manually turned off. As the Tenant denies intentionally turning off a breaker, I cannot conclude that the Tenant

interfered with the circuit breaker and I therefore cannot conclude that the tenancy should end for that reason.

I find that the Landlord submitted insufficient evidence that the Tenants were intentionally draining the hot water tank. Although I accept the Landlord's submission that on five consecutive mornings in May of 2021 there was insufficient hot water, there is no evidence to suggest this was caused by the intentional actions of the Landlord. I find it entirely possible that the Tenants had taken long showers prior to the Landlord turning on the hot water.

In determining this matter, I have placed little weight on the plumber's submission that the hot water may have been overused "possibly maliciously or intentionally". I find this to be mere speculation and has little weight or meaning.

As I cannot conclude that the Tenants intentionally drained the hot water tank, I cannot conclude that the tenancy should end for that reason.

On the basis of the undisputed evidence, I find that the male Tenant stated that reported the Landlord's parents to the authorities on one occasion because he believed they were contravening COVID regulations and on another occasion because he believed they were contravening watering restrictions. When a tenant frequently makes unsubstantiated reports to persons in authority, there can be an assumption that the tenant is doing it for the purposes of harassing the landlord, in which case the landlord may have grounds to end the tenancy.

It is clear from electronic communications exchanged between the Landlord and the male Tenant that the male Tenant believed the Landlord's parents were contravening these regulations. As the male Tenant made these reports because he genuinely believed the regulations were being breached, rather than in an attempt to harass or disturb the parents, and there were only two unrelated reports, I cannot conclude that this tenancy should end because of these reports.

In circumstances where heat is included with the rent, I find that a landlord may have the right to end a tenancy if it can be established that a tenant is intentionally wasting energy. In these circumstances, I find that the Landlord has failed to establish that the Tenants are intentionally wasting energy.

On the basis of the Tenants' evidence, I accept that the male Tenant occasionally leaves his bedroom window open by 1"- 2", for short periods of time, for the purposes of obtaining fresh air, and that he does not do it when it is particularly cold out. I cannot conclude this is unreasonable, particularly when the male Tenant prefers a cooler temperature than the female Tenant, who is his mother. I cannot conclude that it would be unreasonable for a person who prefers cooler temperatures to leave a bedroom window open for brief periods of time, particularly if the door to the rest of the living space was closed.

I find that the Landlord has submitted insufficient evidence to establish that the windows are being left open for an unreasonable amount of time or during unreasonable temperatures.

On the basis of the undisputed evidence, I accept that the Tenants keep the rental unit warmer than the previous occupants, which has increased hydro costs significantly. I find, however, that there is no evidence to establish that the hydro is being used maliciously or irresponsibly. Rather, the female Tenant appears to prefer a warmer home and she is entitled to be comfortable in her home, even if that results in higher costs for the Landlord. This is why many landlords prefer to enter into a cost-sharing arrangement with tenants, rather than simply including hydro with the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants have sprayed a chemical substance on the exterior of the residential property. In my view the photographs submitted in evidence do not corroborate this submission, as those marks could have been made by any number of natural elements. I find that the Landlord has submitted no evidence that corroborates this submission or that refutes the Tenant's testimony that this did not occur.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants left a fish head on the Landlord's parent's deck. While I accept a fish head was located on the deck, I find it entirely possible it was deposited there by a bird. I find that the Landlord has submitted no evidence that corroborates the submission that it was left by the Tenants or that refutes the male Tenant's testimony that he did not deposit the fish head.

In adjudicating this matter, I have placed little weight on the Landlord's testimony that no substances have been located since security cameras were installed in June of 2021.

While this could suggest that the knowledge of the security cameras impacted the Tenants' behaviour, it could also simply be a coincidence.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants have been harassing her parents by making unusual, loud noises at the time and dates noted on exhibit L-15. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the noises occurred or that refutes the Tenant's testimony that they did not occur.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants have been harassing her parents by phoning and hanging up. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that the phone calls were from the Tenants or that refutes the Tenant's testimony that he does not know the parents' phone number.

In adjudicating this matter, I have placed no weight on the Landlord's testimony she has contacted the Tenants' former landlord who reported similar forms of harassment at the Tenants' previous rental unit. As the former landlord would not provide evidence for these proceedings, I find that this is hearsay evidence, which is fraught with frailties.

As the Landlord has failed to establish that the Tenants are intentionally harassing her parents who live on the residential property, I cannot conclude that this tenancy should end because of the alleged harassment.

After considering the Landlord's submissions presented at the hearing, I find that she has failed to establish grounds to end the tenancy pursuant to section 47(1)(d) of the Act. I therefore grant the Tenants' application to cancel the One Month Notice to End Tenancy for Cause, dated April 28, 2021.

Section 47(1) of the *Act* permits a landlord to serve a One Month Notice to End Tenancy for Cause for a variety of reasons. Section 47(4) of the *Act* permits a tenant to dispute that Notice to End Tenancy, in which case a Residential Tenancy Branch Arbitrator will determine whether the tenancy should end. In these circumstances, both parties have exercised the rights granted by section 47 of the *Act*.

When a landlord serves a One Month Notice to End Tenancy for Cause because the landlord genuinely believes there are grounds to end a tenancy, the tenant is not entitled to compensation unless it can be clearly established that the One Month Notice

to End Tenancy for Cause was groundless and was served as an attempt to intimidate or harass the tenant.

Although the Landlord has failed to meet the threshold for ending this tenancy, I am satisfied that the Landlord genuinely believed she had grounds to end this tenancy pursuant to section 47(1)(d) of the *Act* and I cannot conclude that the One Month Notice to End Tenancy for Cause was served as an attempt to intimidate or harass. I therefore find that the Tenants are not entitled to any compensation as a result of being served with the One Month Notice to End Tenancy for Cause.

Conclusion

The One Month Notice to End Tenancy for Cause, dated April 28, 2021, is set aside and has no effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants are not entitled to any compensation as a result of being served with the One Month Notice to End Tenancy for Cause.

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: September 15, 2021

Residential Tenancy Branch