



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

The Tenant applies for the following relief pursuant to the *Residential Tenancy Act* (the “*Act*”):

- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed May 28, 2021;
- An order under s. 62 that the Landlord comply with the *Act*; and
- An order under s. 70 restricting the Landlord’s right to enter the rental unit; and
- Return of the filing fee under s. 72.

P.J. appeared on his own behalf as Tenant. D.K. appeared on her own behalf as Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The One-Month Notice to End Tenancy signed May 28, 2021 was served after being posted to the Tenant’s door. The Landlord provides an affidavit of service indicating that it was served on May 28, 2021. The Tenant acknowledges receipt of the Notice to End Tenancy on May 28, 2021. I find that the One-Month Notice to End Tenancy was served in accordance with s. 88 of the *Act* and the Tenant acknowledges receipt of the same on May 28, 2021.

This matter was adjourned on October 4, 2021 to provide the Tenant an opportunity to serve a USB key that the Landlord indicated she had not received when the Tenant served the rest of his materials on September 20, 2021. I ordered that no new evidence

could be provided by either party and that the Tenant had five days to serve the USB key on the Landlord. The Tenant confirmed serving the USB key on October 6, 2021 by delivering it to the Landlord's residence. The Landlord confirmed receipt of the USB key. I find that the Notice of Dispute Resolution and the Tenant's evidence was served in accordance with s. 89 of the *Act* and, pursuant to my order of October 4, 2021, all documents were served by October 6, 2021.

The Landlord delivered three separate evidence packages to the Tenant, one on September 20, 2021, the second on September 22, 2021, and the last one on September 27, 2021. The Tenant acknowledges receipt of all three evidence packages, though indicates the third package was received on September 24, 2021. I find that the discrepancy on when the final evidence package was delivered to the Tenant relevant as the Tenant acknowledged receipt of all three evidence packages. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* and the Tenant acknowledged receipt of all the Landlord's evidence on September 24, 2021.

Preliminary Issue – Tenant's Application

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

I find that the issues in the Tenant's application related to an order that the Landlord comply with the act and restricting the Landlord's right to access the rental unit are secondary to the principal issue, namely whether the One-Month Notice to End Tenancy will be upheld or cancelled. During the hearing, the parties focused their submissions on the one-month notice to end tenancy and the hearing concluded after 55 minutes. Given the time issue, we were unable to canvass the other issues in the Tenant's application in any detail. Pursuant to Rule 2.3, I dismiss the Tenant's claims under ss. 62 and 70 with leave to reapply in the event I find that I find the tenancy is to continue and the notice cancelled.

Issue(s) to be Decided

- 1) Whether the One-Month Notice to End Tenancy should be cancelled?

2) Whether the Tenant is entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the tenancy began on March 1, 2015 and that the Tenant is currently paying rent of \$1,933.74 per month, which is due on the first. The Landlord holds a security deposit of \$850.00 and a pet damage deposit of \$850.00 in trust for the Tenant. The parties advised that there is a written tenancy agreement from 2015, though neither submitted the 2015 tenancy agreement into evidence. However, in their testimony the parties confirmed that the 2015 tenancy agreement was in the form RTB-1 from 2015 and did not contain addendums.

The residential property is a single-family home exclusively occupied by the Tenant.

The parties appear to have had a prior dispute respecting yard maintenance. The Landlord indicates that they had historically attend the residential property twice a year to clean-up the yard. The Tenant denies this stating that he maintained the yard, however, acknowledges that there would be someone who came by annually to pick-up the yard waste that had accumulated over the year. The Tenant also acknowledges that the Landlord and her mother would attend to weed the front flower bed. The parties advised that the written tenancy agreement was silent on the parties' responsibilities with respect to yard maintenance.

Since the tenancy began, the Tenant has undertaken various landscaping in the backyard of the property, including planting clematis, native plant varieties, and a garden. The Tenant advises that in a previous year, the yard maintenance crew that had attended damaged the landscaping he undertook in the backyard.

This dispute regarding yard maintenance and the Tenant's landscaping forms the backdrop to the circumstances which lead to the Notice to End Tenancy being issued on May 28, 2021.

The Landlord advised having sent a text message the Tenant on May 3, 2021 indicating that she would attend the property to clean-up certain flower beds and weed around the

house. The Landlord provides a series of text messages between the parties in which the Tenant advises that he does not wish the Landlord to do maintenance work to the backyard due to the damage he alleges to have occurred in the previous year.

The Landlord received a text message from the Tenant on May 8, 2021 which she describes as “disturbing”. The reproduced message from the 8th describes the Tenant’s concern respecting damage done to the landscaping, the amount of time it has taken for the landscaping to bounce back and requesting that he does not want the Landlord “poking around the backyard because [he’s] scared [she’s] going to do that or something else similar again on a day off or when [she’s] on holidays”. The Tenant further expresses “concerns and feelings” that have been building up for some time and that he wishes to protect his clematis. There is also mention that the Tenant had been living there for 6 years and that the residential property was his home despite the Landlord owning the property.

The Tenant, for his part, denies the Landlord’s characterization of the May 8, 2021 text message as “disturbing”.

Upon receipt of the text message of May 8, 2021, the Landlord took steps to address issues touching upon the tenancy, including revising the tenancy agreement to address changes in ownership of the property and clarify rights and responsibilities touching upon yard maintenance. The parties set up a time to discuss these outstanding issues on May 17, 2021.

In the Landlord’s evidence, she describes the Tenant as agitated when they met on May 17, 2021. She describes the Tenant pointing at her face telling her to be quiet when discussing the issues she wished to address. The Landlord had a written list of concerns, which were on a clipboard she was carrying. The Landlord indicates that the Tenant grabbed her clipboard. It was after the Tenant grabbed her clipboard that the Landlord retreated from the property and left. She expressed concern for her safety. As she was leaving the property, the Landlord describes that the Tenant was yelling at her in the vehicle as she drove away. The Landlord reported the incident after the fact with the police.

The Tenant’s narrative of the events of May 17, 2021 are different from the Landlord’s. He describes the Landlord showing up angry and acting confrontationally with the Tenant. He denies acting in a threatening manner. He denies “grabbing” the Landlord’s clipboard but does acknowledge tilting the clipboard so that he could see the list of

items the Landlord wished to address. The Tenant says that after he tilted the clipboard the Landlord said, “don’t touch me” and backed away. The Tenant also backed away. The Landlord denies saying “don’t touch me” to the Tenant.

Following the events of May 17, 2021, the Tenant advised the Landlord that he did not wish to speak with the Landlord directly. The Landlord sent a letter to the Tenant on May 19, 2021 in which she advises of her wish to revise the tenancy agreement to remove the previous co-owner of the residential property as well as provide a list of amendments regarding yard maintenance and landscaping. Included in the letter was that the Tenant provide a set of keys to the Landlord by May 28, 2021.

The Landlord advises that she heard no response from the Tenant to her letter of May 17, 2021. Since she did not hear from the Tenant, she had contacted the RCMP to attend the residential property to perform a wellness check on the Tenant. The Tenant acknowledges the wellness check and in his written submissions expressed a degree of frustration having had the RCMP attend the residential property. As the Landlord had not heard a response from the Tenant to her letter of May 17, 2021, she issued the One-Month Notice to End Tenancy on May 28, 2021. The Notice to End Tenancy mentions that the Tenant had changed the locks to the property. The Tenant acknowledges receipt of the letter of May 17, 2021 and indicates that he was preparing a response when he was served with the Notice to End Tenancy.

The Notice to End Tenancy lists two grounds for ending the tenancy:

- 1) The Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- 2) The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable period of time after being provided a written notice to do so.

The Landlord alleges that the incident of May 17, 2021 provides the basis for the unreasonable disturbance. In the Notice to End Tenancy, the Landlord alleges the Tenant failed to provide keys as requested by May 28, 2021. At the hearing, the Landlord confirmed that the material breach of the tenancy agreement was with respect to the keys and that the written demand was the letter of May 19, 2021.

At the hearing, the Tenant denies changing the locks to the residential property. In his evidence, he provides an invoice from March 2018 in which a locksmith attended the property to service the lock. An invoice was forwarded to the Landlord in March 2018

and the Landlord advised that the Tenant could deduct the cost of the locksmith from the next month's rent.

At the hearing, the Landlord acknowledges that she may have lost the keys for the rental unit as she has moved twice and gone through a divorce over the past several years.

A subsequent incident took place after the Notice to End Tenancy was issued on June 21, 2021 in which the Landlord attended the residential property on the assumption that the Tenant was not present as his vehicle was not in the driveway. The Landlord attended with friends and, when the friends left, the Tenant came outside to discuss matters with the Landlord. The Tenant has provided an audio recording of the conversation. The Landlord characterized the Tenant acting in a tricky manner by not having his vehicle in the driveway and only coming out to discuss matters after her friends had left. The Tenant denies this and points out that he need not inform the Landlord when his vehicle is at the mechanic's.

The Tenant argues that the Landlord is attempting to remove him from the property due to the Tenant's rent being below what a new occupant would pay for the unit given the increase rental rates since the tenancy began in 2015. The Tenant indicates that he overheard the Landlord tell her friend that the Tenant was paying "cheap rent". The Landlord denies this and indicates that she's had other causes for ending the tenancy, including late rent, but has acted now on the basis of the events that took place since May 2021.

Analysis

The Tenant applies to cancel a One-Month Notice to End Tenancy signed May 28, 2021. Pursuant to s. 47, a landlord may end a tenancy for cause upon providing one-month's notice to the tenant. Various grounds are listed under s. 47, which include:

- 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 (s. 47(1)(d)(i)); and
- the tenant failing to comply with a material term of the tenancy and not correcting the situation within a reasonable time after the landlord giving written notice to do so (s. 47(1)(h)).

Rule 6.6 of the Rules of Procedure sets out that when a Tenant disputes a notice to end tenancy, the onus is on the landlord to prove the reason they wish to end the tenancy exist.

I find that the One-Month Notice to End Tenancy signed May 28, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, it gives the correct address for the rental unit, it states the correct effective date of June 30, 2021, states the grounds upon which it is being issued, and is in the approved form (RTB-33).

I will first deal with the claim that the Tenant breached a material term of the tenancy agreement, which as set out in the Notice to End Tenancy was that the Tenant had changed the locks at the residential property and failed to provide a key to the Landlord when asked to do so. As set out in Policy Guideline 8 at page 1, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The Landlord has not provided a copy of the signed tenancy agreement. The parties indicate that it was in the standard form, which includes a provision that the tenant is not to change locks to the rental unit, essentially duplicating the Tenant's obligation under s. 31(3).

Without discussing whether this term qualifies as a material term of the contract as per the parties' understanding when the tenancy agreement was made, I find that the Landlord has failed to show that the Tenant has, in fact, changed the locks for the rental unit. The Tenant denies changing the lock. The Tenant submits evidence showing that the lock was serviced in 2018 and communicated this to the Landlord by way of text message in March 2018. Indeed, the Landlord appears to have consented to this and allowed the Tenant to deduct the cost of the locksmith's service from the following month's rent.

At the hearing, the Landlord acknowledged that she may have lost the key to the rental unit. The admission by the Landlord is telling because it would appear that she has no basis upon which to check or claim that the lock has, in fact, been changed. Rather, she appears to misplaced the key and placed a deadline for the Tenant to provide her a copy. Ultimately, I find that the Landlord has failed to show that there was just cause for issuing the Notice to End Tenancy with respect to the breach of a material term of the tenancy agreement. This portion of the Notice to End Tenancy is cancelled.

The second aspect of the Notice to End Tenancy requires the Landlord to demonstrate that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Section 47(1)(d)(i) is intended to protect the right of quiet enjoyment to other occupants and the landlord from a tenant's conduct that falls short of illegal activity, which is covered by s. 47(1)(e). The Landlord does not reside within the residential property and has no claim to the right of quiet enjoyment to the residential property, which is exclusively occupied by the Tenant. There are no other occupants, other than the Tenant's child, reside within the residential property.

I find that the Landlord has failed to demonstrate that the Tenant's unreasonably disturbed or significantly interfered with another occupant or the landlord of the residential property. Given this, the One-Month Notice to End Tenancy is hereby dismissed and the tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

Pursuant to Rule 2.3 of the Rules of Procedure, the Tenant's claims that the Landlord comply with the *Act* and restricting the Landlord's access to the residential property is dismissed with leave to reapply as they were not sufficiently linked to the central issue in the Tenant's application, namely whether the One-Month Notice to End Tenancy would be upheld or cancelled.

Pursuant to s. 47 of the *Act*, the One-Month Notice to End Tenancy is hereby cancelled, and the tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenant was successful in his application and the notice was cancelled, he is entitled to return of his filing fee pursuant to s. 72 of the *Act*. The Tenants may withhold \$100.00 from future rent on one occasion in full satisfaction for a return of their application 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: October 18, 2021

Residential Tenancy Branch