Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNE, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants attended the hearing. The landlord was represented at the hearing by the Assistant Property Manager [the "landlord"]. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenants confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act. The Canada Post tracking numbers confirming the landlord and tenant mailings are reproduced on the cover of this decision.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies 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, and/ or a monetary order if the application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue #1- Unidentified Participant

This hearing was scheduled for 9:30 a.m. The parties present on the call were asked to identify themselves. The tenants, calling in from the same phone, identified themselves. Another party on the line did not identify themselves despite my multiple requests. This may have been the result of a systems problem. Unable to confirm the other party on in the conference, I asked the parties to disconnect and call back into the hearing. When the parties called in a second time, the participants were able to identify themselves and the hearing proceeded.

Preliminary Issue #2- Landlord's Name Amended

The landlord's surname was not provided on any of the documentation and not recorded in the dispute system. The landlord provided me with the spelling of her surname and her name was amended in the system.

Preliminary Issue #3 – Unrelated Issues

Rule 2.3 and 6.2 of the Rules allow an arbitrator to consider whether issues are related and if they should be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the issues before me at the start of the hearing, I determined that the most pressing issue in the tenant's application deals with whether or not the tenancy is ending by way of the One Month Notice to End Tenancy for Cause. As a result, I exercise my discretion to dismiss, with leave to reapply, the remaining issue identified in the tenant's Application for Dispute Resolution Proceeding Package.

Issues to be Decided

Are the tenants entitled to:

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

If the tenant fails in this application, is the landlord entitled to:

1) 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 parties entered into a written fixed term tenancy agreement starting October 1, 2010. Monthly rent is $1670.00, payable on the first of each month. The tenants paid the landlord a security deposit of $700.00. The landlord still retains this deposit. No pet damage deposit was paid. Clause 18, "Pets", does not prohibit pets but does require written consent to keep a pet(s).

The tenant testified their family has lived in the complex for eleven- and one-half years. They are the only original family left. When they first moved into the complex, any requests or issues were dealt with informally – a phone call to the landlord or a conversation in passing. Everyone had pets, everyone got along, it was very much a family-oriented complex.

The tenant testified that her family had the two (2) dogs when they first moved into the rental unit. The family never kept the dogs a secret or hidden, again reiterating they have been in the complex for eleven and a half years, so keeping the dogs secret would be next to impossible. Further, she points out that the landlord and maintenance people have been in and out of the rental unit over the course of the eleven and a half years and the dogs were present. Again, the tenant emphasized that the dogs were never an issue in the past and she suspects that the issue has more to do with the landlord's inability to raise the rent to the current rent charged to new tenants.

The tenant acknowledges that the dogs are not on the lease, again stating that when the family first moved in the rules and regulations were less formal and so nothing was put in writing. She states the two dogs are senior dogs, over twelve (12) years old and are lap dogs.

The tenant disputes that either of the dogs bit the landscaper because neither dog has much in the way of teeth left. The tenant provided the veterinarian dental charts of both dogs as evidence. The tenant states that on November 26, 2021, her father came home from work, opened the door and the dogs escaped running over to the landscaper. Her father went over scooped the dogs and chatted with the landscaper for a few minutes before heading inside. The family was saddened and shocked to learn that the landscaper accused one of the dogs of biting him. First, as previously mentioned, both dogs have had their teeth removed; second, the landscaper was wearing rubber boots the day the dogs ran out; and finally, the landscaper said absolutely nothing to her father at the time of the incident.

The tenant acknowledged that perhaps the landscaper may have been afraid of dogs. She apologizes if the dogs barking at and running up to the landscaper scared him. Again, the tenant adamantly denied the dogs had the teeth required to bite anyone or anything.

The landlord confirmed the family are long term residents of the complex. She states that she was "unaware of the dogs until a few years ago" and when she became aware of the dogs told the tenants the dogs could not stay.

The landlord states that the landscaper reported the incident to her and provided pictures of the laceration. The landscaper's written statement is on file, but the pictures were not provided because they "were private". She testified that the landscaper had to seek medical attention. The landscaper was not available to testify because he was sick. The landlord was willing to provide photos after the hearing and I explained the rules around the submission of evidence.

The landlord stated that whether the dogs did or did not have teeth was irrelevant, the dog(s) bit someone and that could affect the person's health – whether the dogs had teeth or not. The landlord testified that she personally saw the blood on the landscaper's leg. Further, the dogs were off leash.

The two grounds to end tenancy in the Notice were:

- the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and
- the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, and safety or physical well-being of another occupant or landlord.

The landlord testified that the landscaper is not a tenant or occupant of the complex. He is employed to maintain the grounds and the "dog attack" jeopardized his health or safety.

The "illegal activity" the tenant engaged in was breaking the lease by owning dogs. The tenants stated they were in the process of looking to purchase their own home and asked if the landlord was open to negotiating an end of tenancy in the next 4-6 months. The landlord refused the request.

Analysis

Section 47(4) of the *Act* states that upon receipt of a notice to end tenancy for cause, the tenant may, within ten (10) days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. In the present case, the tenants applied for dispute resolution on December 28, 2021, in response to the Notice issued December 23, 2021. Accordingly, I find that the tenant(s) were/ was within the statutory limit to dispute the One-Month Notice.

The first issue in the tenant(s) application is a request for an order to cancel the One-Month Notice to End Tenancy for Cause dated December 23, 2021. The landlord has the burden of proving that the reasons provided are sufficient to end the tenancy.

In the present case, the first "cause" identified by the landlord in the One Month Notice was that the tenants "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". It is, therefore, incumbent upon the landlord to establish that the tenants violated the *Act* by engaging in conduct that seriously jeopardized the health or safety or lawful right of another occupant or the landlord, *of a magnitude sufficient to warrant ending the tenancy* under s.47(1)(d) of the *Act*.

I now turn my mind to the landlord evidence with a view to deciding if the evidence provided establishes, on a balance of probabilities, that the tenant's conduct "seriously" jeopardized another occupant or the landlord.

The landlord testified that the landscaper is employed to maintain the grounds of the complex. He does not reside in the complex. The provisions of s. 47(1)(d) are clear, permitting the landlord to end tenancy:

47 (d) if 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,

(ii) **seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant**, or

(iii) put the landlord's property at significant risk;

The landscaper is not an "occupant" of the residential property; therefore, while the alleged incident may be cause to file a work-related claim with the Workers Compensation Board for any medical aid or lost wages incurred, it is not a ground for ending tenancy under s. 47(1)(d).

I have also considered whether the alleged incident jeopardized the health or safety or a lawful right or interest of the landlord.

The landlord provided affirmed testimony that she personally saw blood on the landscaper's leg and that the landscaper had to seek medical attention. Neither the pictures nor medical proof of a dog bite was provided as evidence. The landscaper was unavailable to testify. Neither the landlord or the landscaper contacted, for example, bylaws or animal control to request an investigation into the alleged incident.

The date of the alleged incident was November 29, 2021, and yet the landlord did not issue the One Month Notice until December 23, 2021, almost one month after the alleged incident occurred. If the landlord was concerned that the alleged incident "**seriously** jeopardized the health and safety or a lawful right or interest of the landlord", then issuing the Notice almost one month after the alleged incident is counterintuitive. If an incident "seriously jeopardizes" a right, an interest, or the health or safety of an occupant or the landlord, it stands to reason that the paperwork would have been

completed and issued in a timely manner, in other words, promptly – not one month after.

Upon review of the evidence before me, I find the landlord has failed to provide sufficient evidence to establish the tenant's behavior on November 29, 2021, "**seriously jeopardized the health or safety or a lawful right or interest of <u>the landlord or another occupant</u>**".

The second ground for ending tenancy for cause cited by the landlord alleged the tenants engaged in "illegal activity". Section 47(1)(e) allows the landlord to end the tenancy for the following reasons:

47 (1)(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
- (i) has caused or is likely to cause damage to the landlord's property
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Residential Policy Guideline 32, "Illegal Activities" defines the meaning of illegal activity and what constitutes an illegal activity and reads in part:

> The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The landlord testified that the "illegal activity" was a breach of the pet terms in the Tenancy Agreement. The definition of "illegal activity" specifically identifies **serious** violations of federal, provincial, or municipal law and does not include alleged breaches of tenancy agreements.

I find the landlord has failed to provide sufficient evidence to establish the tenants were engaged in "illegal activities".

Notwithstanding that the landlord's second ground falls short of the test for "illegal activity", I am compelled to comment on the landlord's affirmed testimony that for nine (9) to ten (10) years, she was unaware that there were two (2) dogs residing in the residential unit. I question the veracity of her testimony given she confirmed she was the landlord of record when the tenants moved in; she completed periodic inspections of the rental unit, was in the residential complex regularly, and sent maintenance people into

the rental unit to do any necessary repairs. So, either the dogs were extremely well behaved and never left the residential unit in the eleven and one-half years they have been there, or the landlord was aware of the dogs and chose to ignore that fact.

Also of note, the tenancy agreement does not prohibit pets but rather allows pets with the written permission of the landlord. I accept the tenant's testimony as fact, that at the start of the tenancy, the rules were not strictly enforced and the landlord tenant relationship more informal. These dogs have been part of the family unit since the family moved into the rental unit and although not formally written into the tenancy agreement, there was a tacit understanding between the parties that these these dogs were permitted in the rental unit.

In conclusion, I find that the landlord has only provided allegations of the tenant's misconduct, most of which were unsupported by reliable evidence, and disputed by the tenant.

Taking into careful consideration all of the oral testimony and documentary evidence presented before me and applying the law to the facts, I find on a balance of probability that the landlord has failed to prove the grounds cited on the application for an order under s. 47 of the *Act*.

The tenants' application for an order cancelling the One Month Notice is granted.

The tenants are entitled to recover the $100.00 filing fee.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover their filing fee from the landlord by deducting $100.00 from their rent on a one-time only basis.

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: February 11, 2022

Residential Tenancy Branch