



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, MNDCL-S

Introduction

This was a review hearing; the first hearing occurred on October 22, 2021. The decision and order were issued on October 25, 2021. A Review Consideration Decision, dated November 9, 2021, suspended the decision and order and granted “a new hearing of the original application.” The original application was submitted by the Landlord on June 21, 2021.

Pursuant to section 82 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Landlord applied for:

- an order of possession, the Tenant having given written notice to end the tenancy;
- an order of possession, having issued a One Month Notice to End Tenancy for Cause, dated May 19, 2021 (the One Month Notice); and
- compensation for monetary loss or other money owed, noting the Landlord holds a security or pet deposit.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Review Consideration Decision noted that the review applicant, the Tenant, must serve documents on the review respondent, the Landlord, as follows:

- the review applicant must serve the Notice of Dispute Resolution Proceeding (NDRP) on the review respondent within three days of receipt of the Review Consideration Decision;
- the review applicant must serve a copy of the Review Consideration Decision on the review respondent; and

- the review applicant must serve the review respondent with their current address for service.

The Review Consideration Decision also noted that each party must serve the other and the Residential Tenancy Branch (RTB) with any evidence they intended to rely upon in today's hearing.

The Tenant testified she served neither the NDRP nor the Review Consideration Decision on the Landlord. The Tenant testified she served her current address for service and evidence on the Landlord by leaving it with the Landlord's adult son at the Landlord's home on January 7, 2021. The Landlord confirmed he was served the documents as described.

I find the Tenant did not serve the NDRP and Review Consideration Decision on the Landlord in accordance with section 88 of the Act, but did serve her address for service and evidence on the Landlord in accordance with section 88.

The Landlord testified he served his original application documents and evidence on the Tenant in two packages sent by registered mail on November 17, 2021 and December 23, 2021, and provided the Canada Post tracking numbers. The Tenant confirmed receipt of the Landlord's documents.

I find the Landlord served the Tenant in accordance with section 88 of the Act.

The Tenant's failure to serve the NDRP and Review Consideration Decision does not prejudice the Landlord, who was in attendance at the hearing and prepared to proceed with his original application.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 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.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the Landlord's application for compensation.

The remainder of this decision will contemplate the Landlord's two applications for an order of possession.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession, the Tenant having given written notice to end the tenancy?
- 2) Is the Landlord entitled to an order of possession, having issued the One Month Notice?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on June 1, 2016; rent is \$1,479.58, due on the first of the month; and the Tenant paid a security deposit of \$650.00, which the Landlord still holds.

The Tenant testified she has not given the Landlord written notice to end the tenancy.

The Tenant testified that on November 29, 2019, the Landlord presented her with a written Mutual Agreement to End the Tenancy (MAET), which stated that the Tenant agreed to move out of the rental unit by the end of June 2020. The Tenant testified she signed the agreement that day, "but we worked out the differences." The Tenant testified that over the last two years, the Landlord has not raised the issue of the MAET. A copy of the MAET was submitted as evidence.

The Landlord testified there was no resolution or agreement about the Tenant remaining in the rental unit; she simply did not move out at the end of June 2020.

As above, the Landlord provided testimony regarding the MAET; however, he did not provide testimony or documentary evidence to support his claim that he is seeking an order of possession as the Tenant has given written notice to end the tenancy (of her own volition).

The Landlord submitted a copy of the One Month Notice as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states an effective date of the notice, states the reason for ending the tenancy, and is in the approved form. The Notice states the tenancy is ending because:

- the Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the property by the Tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant of the Landlord;
 - put the landlord's property at significant risk;
- the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit;
- the Tenant has not done required repairs of damage to the unit; and
- the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of the Event(s) section refers to repeated late payment of rent, and warning letters issued to the Tenant regarding numerous issues.

The Landlord testified he served the One Month Notice on the Tenant on May 19, 2021 by posting it on the door and by registered mail. The Landlord provided a Canada Post receipt and tracking number as proof. The Canada Post website indicates the package was received on May 19, 2021, and returned to the sender on June 16, 2021.

The Tenant testified she did not receive the One Month Notice.

The Tenant testified that the first time she "heard about any of this" was November 3, 2021, when she received a decision letter from the RTB. The Tenant stated that she had not received any mail regarding the first hearing. The Tenant testified that she visited the RTB on November 5, 2021, and filed a Review Request.

The Tenant testified she has attended three previous RTB hearings with the Landlord, and would not have ignored documents related to the tenancy.

The Tenant testified she has not had previous difficulty receiving mail.

With regard to the first reason indicated on the One Month Notice, that the Tenant is repeatedly late paying rent, the Landlord testified that the Tenant paid rent late in December and May 2021. The Landlord testified they served the Tenant with a 10 Day Notice on May 6, 2021, and that the Tenant said she did not receive it.

The Landlord testified the Tenant also paid rent late in 2020, but he did not have those records at hand.

The Tenant testified that on May 6, 2021, she received a handwritten note from the Landlord, not a form, and texted the Landlord indicating she would look into why her cheque did not go through.

The Landlord testified he had posted the 10 Day Notice to the Tenant's door, and written at the bottom of the Notice that her cheque had bounced.

Regarding the second reason indicated on the One Month Notice, that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, the Landlord testified that the Tenant has:

- not cleaned the deck or the stairways at the front and back of the property in four years, causing them to become very slippery;
- closed off the garage to use it as a storage space, resulting in rats, racoons, and dangerous spiders inhabiting the space;
- placed a tarp on top of the garage, causing mold to grow on the roof shingles;
- allowed the grass in the yard to grow over three feet tall, allowing animals to hide in the grass, and causing damage to the lawn mower;
- moved the dryer, which caused the dryer exhaust to come out of the wall, resulting in lint being discharged into the rental unit; and
- not opened the door of her daughter's room for eight months, causing the room to be "totally contaminated with lint" from the dryer, due to the previously described exhaust issue.

The Tenant testified that the "garage issue" has been decided on in her favour in three previous RTB hearings, she uses it for storage, she has had someone "frame out" the door, and bought the tarp for the roof because when it rained, the roofing materials were falling into the recycling below.

The Tenant testified she had not been able to keep up with cutting the grass as she broke her ankle in February 2021, and because in May 2021 the lawnmower stopped working and the Landlord has not repaired or replaced it.

The Tenant testified it is not true that she left her daughter's door closed for eight months, or that the room filled with lint. The Tenant testified that she enters her daughter's room periodically, and that it was not lint in the room, but black mold, which she asked the Landlord to deal with. The Tenant testified that it does not make sense to suggest it is lint accumulating in the room, as the dryer is on the opposite side of the house, on a different floor.

Regarding the third reason indicate on the One Month Notice, that the Tenant has put the Landlord's property at significant risk, the Landlord testified that the Tenant:

- installed an umbrella on the roof, chipping one of the shingles;
- was negligent, according to a contractor, in not providing proper dryer ventilation, resulting in the accumulation of lint in the Tenant's daughter's room;
- introduced fleas into the rental property via a pet;
- isn't cleaning the wooden deck and stairs, causing them to be slippery, and potentially rot;
- is making the garage hospitable to rats, as the interior is now in constant darkness; and
- is leaning heavy things against the garage wall, which "is not strong."

The Tenant testified that the spot on the roof with the damaged shingle is the same spot where the Landlord accessed the roof, and that the damage is not due to the umbrella.

The Tenant reiterated her previous testimony regarding the condition of her daughter's room.

The Tenant testified she has pressure washed the deck and stairs every year except 2020, and that she is not able to do the front steps because the hose is not long enough. The Tenant testified she has informed the Landlord, but he has not provided an additional hose. The Tenant testified she texted the Landlord around June 2021 to inform him she could not do the pressure washing due to an injury.

The Tenant testified that following a November 2021 inspection, in which the Landlord told her that nothing can be leaning against the garage walls, she has relocated the items that had been leaning against the walls of the garage.

Regarding the fourth reason indicated on the One Month Notice, that the Tenant has caused extraordinary damage to the unit or property, the Landlord testified that the garage is going to collapse because the Tenant closed it off, put the tarp on the roof,

and is leaning items against the wall. The Landlord testified the tarp causes moisture to collect, and now that the garage is closed off, the air does not get in.

The Tenant testified that the garage was almost falling down when she first moved into the rental unit, and prior to her tenancy, the Landlord had connected the opposite walls of the garage with a chain, to hold the walls up. The Tenant submitted that the tarp she put on the roof has helped the garage remain standing.

Regarding the fifth reason indicated on the One Month Notice, that the Tenant has not done required repairs to the unit or property, the Landlord testified that the Tenant has not: painted the discolouration in her daughter's room, "caused by her negligence"; replaced the chipped shingle; or painted the stairs. The Landlord testified that the colour of the stairs has changed, but provided no additional details.

The Tenant testified that the discolouration in her daughter's room was due to mold, and that she had been telling the Landlord for three years there was a hole in the exterior of the unit, where squirrels were getting in. The Tenant testified that it appears moisture had also been getting in via the hole, creating the mold in her daughter's room, as once the Landlord covered the hole, there was no more mold in the room.

The Tenant reiterated her previous testimony regarding the damage to the shingle, and the location of the dryer.

Regarding the sixth reason indicated on the One Month Notice, that the Tenant breached a material term of the tenancy agreement and did not correct it within a reasonable time after written notice to do so, the Landlord testified that the Tenant had violated the no-pets term in the tenancy agreement, and had not cut the grass as required by the tenancy agreement. The Landlord submitted as evidence written notices regarding the lawn maintenance.

The Tenant testified that she did not have a pet, but occasionally looked after her daughter's cat, having notified the Landlord. The Tenant testified that at times she had not been able to keep up with cutting the grass due to injuries and health problems, and due to the Landlord not repairing the lawnmower.

The Tenant testified that she cannot afford to move, and that it would also be difficult to move due to her recent injuries. The Tenant testified she has been looking for a new home for a long time, but has found nothing she can afford.

Analysis

- 1) Is the Landlord entitled to an order of possession, the Tenant having given written notice to end the tenancy?

The Landlord provided testimony regarding the mutual agreement to end the tenancy (MAET) signed by the parties on November 29, 2019, but provided no testimony or documentary evidence to support the claim that the Tenant gave written notice to end the tenancy (of her own volition), which is a different matter from a mutual agreement between two parties. The Landlord has not applied for an order of possession related to a MAET. Additionally, the Tenant testified that she did not give written notice to end the tenancy. Therefore, I dismiss the Landlord's application for an order of possession.

- 2) Is the Landlord entitled to an order of possession, having issued the One Month Notice?

The Landlord has provided both affirmed testimony and documentary evidence to support his claim that he served the One Month Notice on the Tenant by posting it on the door of the rental unit and sending it by registered mail on May 19, 2021.

Based on the affirmed testimony and the evidence before me, I find on a balance of probabilities, meaning more likely than not, that the Landlord served the One Month Notice on the Tenant in the manner he described, which are both methods of service in accordance with section 88 of the Act. The Landlord served the One Month Notice by posting it on the door of the rental unit and sending it by registered mail on May 19, 2021. The One Month Notice posted to the Tenant's door is deemed received by the Tenant on May 22, 2021, per section 90 of the Act.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47(4) of the Act provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the Tenant did not file an application for dispute resolution within 10 days of May 22, 2021, the timeline granted under section 47(4) of the Act. Accordingly, I find that the Tenant is conclusively presumed under section 47(5) to have accepted that the tenancy ends on the effective date of the One Month Notice, June 30, 2021, and must

vacate the rental unit. In accordance with section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

As the tenancy is ending, I find it unnecessary for me to consider whether the 2019 MAET has force.

Conclusion

Pursuant to section 82(3), I set aside the October 25, 2021 decision and order, as this proceeding was a new hearing of the Landlord's application and results in a new decision and order.

Pursuant to section 55(2)(b) of the Act, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

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 3, 2022

Residential Tenancy Branch