Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 21, 2022 the Dispute Resolution Package was sent to the Landlord, via WhatsApp. The Landlord acknowledged receipt of these documents, via WhatsApp. As the Landlord acknowledged receipt of these documents, I find that they have been sufficiently served pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act).*

On February 22, 2022 and March 28, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that none of this evidence was served to the Landlord as evidence for these proceedings. As none of the evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

On March 27, 2022 and March 28, 2022, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was left on the exterior doormat in front of the door to the rental unit on March 25, 2022. The Tenant stated that this evidence was not received.

Section 88 of the *Act* outlines various ways in which evidence can be served to the other party. Although section 88(f) of the *Act* permits service of evidence to a tenant by

leaving a copy in a mailbox or mail slot for the address at which the person resides and section 88(g) allows service of evidence to a tenant by attaching a copy to a door or other conspicuous place at the address at which the person resides, there is nothing in the *Act* that permits evidence to be served by simply leaving it on a doormat in front of the person's front door. Presumably the *Act* does not permit service of documents in this manner because documents left in such a manner could be overlooked by an individual or moved by natural forces prior to being located by the intended recipient.

As section 88 of the *Act* does not permit documents to be served by leaving them on a door mat, I find that the Landlord's evidence was not served in accordance with section 88 of the *Act*. In the absence of evidence to refute the Tenant's testimony that he did not receive the Landlord's evidence, I cannot conclude that these documents were sufficiently served to the Tenant, pursuant to section 71(2) of the *Act*. As such, the Landlord's evidence was not accepted as evidence for these proceedings.

The Landlord requested an adjournment for the opportunity to re-serve his evidence to the Tenant. The request for an adjournment was declined.

I declined the request for an adjournment, in part, because the Landlord did not make reasonable efforts to properly serve evidence to the Tenant. With reasonable diligence, the Landlord could have served evidence to the Tenant by attaching it to the door, which is a service method permitted by section 88 of the *Act.*

I declined the request for an adjournment, in part, because the Landlord was given the opportunity to discuss the content of his documentary evidence at the hearing. As such, I find that the Landlord had a reasonable opportunity to be heard and to present his evidence.

I declined the request for an adjournment, in part, because the content of the Landlord's evidence, as described at the hearing, would not likely alter my final decision.

I declined the request for an adjournment, in part, because an adjournment would delay these proceedings for several weeks, which would be unfair to the Tenant, as the Tenant would have to live with the possibility of his tenancy ending.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord, the Tenant, and

the Agent for the Tenant each 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. The Landlord, the Tenant, and the Agent for the Tenant each affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Tenant's name, as that name was provided at the hearing.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2008;
- when the tenancy began the Tenant, an adult female, and four children were living in the rental unit;
- the rental unit has four bedrooms and 2.5 baths;
- there is a separate suite on the lower level of the residential complex;
- there were 3 people living in the lower suite but there are now only 2 people living in that suite;
- a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on February 18, 2022;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by March 18, 2022; and
- the reasons for ending the tenancy cited on the Notice to End Tenancy are that the tenant has allowed an unreasonable number of occupants in the unit; that the tenant or a person permitted on the property by the has put the landlord's

property at significant risk; that the tenant has assigned or sublet the rental unit without written consent; that the tenant has not done required repairs to the rental unit; that the tenant has provided false information to a prospective tenant or purchaser; and that the rental unit must be vacated to comply with a Government Order.

In support of the notice to end tenancy on the basis that there are an unreasonable number of occupants in the unit, the Landlord stated that:

- there are currently between 10 to 12 people living in the rental unit at any given time;
- he inspected the rental unit in February of 2022 and observed five beds in the four bedrooms and 7 mattresses leaning against the wall in the living room;
- he has letters from four neighbours in which all the neighbours estimate there are between 10 and 12 people living in the rental unit, based on their observations of vehicle and pedestrian traffic;
- there are 10 people living in the residential complex he lives in, and a typical water bill is around $600.00 or $650.00;
- the water bill for the residential complex in which the Tenant lives has been approximately $1,000.00, which he submits establishes there are more than 7 people living in the two suites in the Tenant's residential complex;
- the hydro bill for the complex in which the Tenant lives is approximately $100.00 per month, which is higher than the hydro bill for the residential complex in which the Landlord lives, which he submits establishes there are more than 7 people living in the two suites in the Tenant's residential complex;
- one gas bill for the residential complex in which the Landlord lives was around $450.00; and
- the gas bill for the same period for the residential complex in which the Tenant lives was around $700.00, which he submits establishes there are more than 7 people living in in the two suites in the Tenant's residential complex**.**

In response to the attempt to end the tenancy on the basis that there are an unreasonable number of occupants in the unit, the Tenant stated that:

- he currently lives at the rental unit with his wife and three adult sons;
- nobody else lives in the rental unit;
- when the Landlord inspected the rental unit in February of 2022 there were only 3 mattresses in the living room, which were in the process of being disposed of;
- if there are letters from neighbours asserting there are 10 to 12 people living in the unit, those neighbours are incorrect;

- Between March 10, 2022 and March 24, 2022 three guests stayed in the home;
- No other guests have recently stayed in the home for any extended period of time;
- Although he has not seen a water bill, the Landlord has told him they are exceedingly high; and
- He does not know why the water bill is so high, as they do not use an excessive amount of water.

In response to the attempt to end the tenancy on the basis that there are an unreasonable number of occupants in the unit, the Agent for the Tenant stated that they regularly have guests coming and going from the rental unit, as they have many relatives living nearby, but those guests do not live in the unit.

The Witness for the Tenant stated tat he lived below the Tenant from January of 2021 to November 15, 2021, during which time the Tenant, the Tenant's wife, and their four sons lived in the rental unit.

In support of the notice to end tenancy on the basis that the Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk, the Landlord submits the number of people living in the unit place his property at risk.

In support of the notice to end tenancy on the basis that the Tenant has assigned or sublet the rental unit, the Landlord stated that he believes the Tenant is living in the rental unit with many other people.

In support of the notice to end tenancy on the basis that the Tenant has not done required repairs to the rental unit, the Landlord stated that:

- A 6" diameter portion of the surface of the sundeck was damaged;
- The Landlord has covered the damage with silicone to protect the subsurface from being damaged;
- He asked the Tenant to repair the damaged sundeck approximately one year ago;
- There is an oil stain on the driveway;
- The oil stain is still present even though the Tenant has power washed the driveway;
- The Tenants increased the temperature setting of the hot water tank, which caused a waterline to burst; and

- The occupants of the other suite in the residential complex have access to the hot water tank.

In response to the notice to end tenancy on the basis that the Tenant has not done required repairs to the rental unit, the Tenant stated that:

- a portion of the surface of the sundeck was damaged when a hot pot was moved from the barbecue to the sundeck surface;
- The Landlord has covered the damage with silicone;
- The Landlord has never asked the Tenant to repair the damage;
- The oil stain on the driveway has been power washed and is completely gone; and
- He has never increased the temperature setting of the hot water tank.

In support of the notice to end tenancy on the basis that the Tenant has provided false information to a prospective tenant or purchaser, the Landlord stated that he did not intend to cite this as a reason for ending the tenancy on the One Month Notice to End Tenancy for Cause. As such, this ground for ending the tenancy was not considered at the proceedings.

In support of the notice to end tenancy on the basis that the rental unit must be vacated to comply with a Government Order, the Landlord stated that he did not intend to cite this as a reason for ending the tenancy on the One Month Notice to End Tenancy for Cause. As such, this ground for ending the tenancy was not considered at the proceedings.

Analysis

When a landlord wishes to end a tenancy pursuant to section 47 of the *Residential Tenancy Act (Act),* the landlord bears the burden of providing there are grounds to end the tenancy.

Section 47(1)(c) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit. On the basis of the undisputed evidence, I find that on February 18, 2022 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause which declared, in part, that the Landlord wished to end the tenancy pursuant to section 47(1)(c) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish there are grounds to end the tenancy pursuant to section 47(1)(c) of the *Act.* I find that the Landlord has submitted insufficient evidence to support his submission that there are 10-12 people living in the rental unit or to refute the Tenant's submission that there are only 5 adults living in the rental unit.

Although the Landlord submits that four neighbors have concluded that there are 10-12 people living in the unit, the Witness for the Tenant testified that while he was living below the rental unit between January of 2021 and November 15, 2021 only the Tenant, the Tenant's wife, and four children were living in the unit. As the Witness for the Tenant was actually living in the residential complex, I find that his testimony carries greater weight than the opinions of neighbours who are not living on the residential property.

Even if I accepted the Landlord's testimony that the water bill for this residential complex is significantly higher than the bill for the residential complex in which the Landlord lives, I cannot conclude that this establishes there are more than 5 or 6 adults living in the rental unit. While it is possible that the water bill is higher for the Tenant's residential complex because there are more people living in that complex, it is also possible that the people living in the Tenant's complex simply use more water, perhaps because they shower more often, water the lawn more frequently, or do more laundry.

Even if I accepted the Landlord's testimony that the hydro and gas bills for this residential complex are significantly higher than the bills for the residential complex in which the Landlord lives, I cannot conclude that this establishes there are more than 5 or 6 adults living in the rental unit. While it is possible that the hydro/gas bills are higher for the Tenant's residential complex because there are more people living in that complex, it is also possible that the people living in the Tenant's complex simply use more electricity/gas than the people living in the Landlord's complex, perhaps because they are simply less concerned with the cost of hydro and gas.

During this adjudication I considered the Landlord's testimony that he observed 7 mattresses in the Tenant's living room in February of 2022. I cannot conclude, however, that this establishes there are more than 5 or 6 adults living in the rental unit, as the Landlord's explanation that the mattresses were in the living awaiting disposal is a reasonable explanation.

Section 47(1)(d)(iii) 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 put the landlord's property at significant risk. As the Landlord has failed to establish there are an unreasonable number of people living in the rental unit, I cannot conclude that he has established grounds to end the tenancy on the basis that an unreasonable number of occupants are placing his property at risk.

Section 47(1)(i) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. To assign or sublet the rental unit the Tenant must move out of the unit. As the evidence shows that the Tenant is still living in the rental unit and there is no evidence that the Tenant intends to sublet or assign the unit, I find that the Landlord has not established grounds to end the tenancy pursuant to section 47(1)(i) of the *Act.*

Section 47(1)(g) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) of the *Act*, within a reasonable time.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the undisputed evidence, I find that the Tenant or a person permitted on property by the Tenant stained the driveway. I find that there is insufficient sufficient evidence to support the Landlord’s submission that the oil stain on the driveway was not sufficiently cleaned with a power washer or to refute the Tenant’s testimony that the area was power washed and the stain is now gone. As the Landlord has not established that the stain is currently present, I cannot conclude that the driveway is currently in need of repair. I therefore find that the Landlord does not have the right to end this tenancy on the basis of the damaged driveway.

Even if I accepted the Landlord’s submission that a water line burst because the temperature setting on the hot water tank had been increased, I find that there is insufficient evidence to support the Landlord’s submission that the Tenant or someone on the property increased the temperature. As the Tenant denies increasing the temperature setting and the parties agree that the occupants of the other suite in the residential complex have access to the hot water tank, I find it entirely possible that

those occupants increased the temperature setting. I therefore find that the Landlord does not have the right to end this tenancy on the basis of the damaged water line.

On the basis of the undisputed evidence, I find that the Tenant or a person permitted on the property by the Tenant damaged the surface of the sun deck. I therefore find that the Tenant must repair the damaged sundeck, pursuant to section 32(3) of the *Act.* The Tenant is only required to repair sundeck, of course, if the silicone added by the Landlord has not sufficiently repaired the damage. If the silicone sufficiently repaired the damage, the Landlord may be entitled to compensation for the costs of that repair.

I find that the Landlord does not have grounds to end the tenancy as a result of damage to the sundeck, as section 47(1)(g)) of the *Act* permits a landlord to end a tenancy only if the damage has not been repaired within a reasonable time. I find that the Landlord has submitted insufficient to support his testimony that he asked the Tenant to repair the damaged sundeck or to refute the Tenant's submission that he was not asked to repair the sundeck. In circumstances such as these, where the Landlord has made repairs to the sun deck and the Tenant submits that he has never been asked to make repairs, I cannot conclude that the Tenant understood further repairs were required and he could not, therefore, make them within a reasonable amount of time.

After considering all of the evidence before me, I find that the Landlord has failed to establish grounds to end the tenancy pursuant to sections 47(1)(c), 47(1)(d)(iii), 47(1)(i), and47(1)(g) of the Act. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. This tenancy shall continue until it is ended in accordance with the *Act.*

As I find the Tenant's application has merit, I authorize the Tenant to deduct $100.00 from one rent payment, as compensation for the fee paid to file this Application for Dispute Resolution.

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: March 31, 2022

Residential Tenancy Branch