



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDCT, RR, AS, RP, OLC, LRE, DRI-ARI-C

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following claims:

- to cancel a One Month Notice to End Tenancy for Cause;
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
- for a monetary order of \$1,000.00 for damage or compensation under the Act;
- to reduce the rent for repairs, services or facilities agreed upon but not provided;
- for an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- for an Order for the Landlord to Comply with the Act or tenancy agreement; and
- to dispute a rent increase from the Landlord for an additional rent increase for a capital expenditure

The Tenant, counsel for the Tenant, A.E. ("Counsel"), and the Landlords, W.C. and N.C., appeared at the teleconference hearing and gave affirmed testimony (other than Counsel, who did not submit any evidence or testimony). I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that he served the Landlords with his Application and Notice of Hearing documents on January 19, 2022, via registered mail. The Tenant submitted the Canada Post registered mail tracking number as proof of service. The Tenant said he served the Landlords with the evidence that he submitted to the RTB by taping envelopes to the front door of their residence. The Tenant submitted a photograph showing envelopes

taped to the Landlords' door. The Landlords agreed that the Tenants had served them with these documents, as stated. Based on the testimony and documentary evidence before me, I find that the Landlords were properly served with the Tenant's Notice of Hearing documents and evidence.

The Landlords indicated that they had served their evidence to the Tenant regarding a prior hearing the Parties had attended, and they indicated that they intended to rely on that evidence in this hearing. However, rules of administrative fairness, as set out in the RTB Rules of Procedure require a party to share the evidence on which they intend to rely with the other party for each proceeding that is commenced. As such, the Landlords should have again served the Tenant with all of the documents they uploaded to the RTB for this hearing, even though they may have served the same evidence to him for another hearing.

Further, the Landlords submitted their evidence to the RTB three days prior to the hearing. This is not compliant with the Rules, which require respondents to submit their evidence to the RTB and serve it to the Tenants not less than seven days prior to the hearing. As a result, and pursuant to Rule 3.15 and 3.16, I decline to consider the Landlords' documentary submissions. The Landlords' testimony is evidence before me.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application and he confirmed this in the hearing. The Landlords and Counsel also gave me their respective email addresses in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Before the Parties testified, I advised them of Rule 2.3, which authorizes me to dismiss unrelated disputes contained in a single application. In this case, the Tenant indicated different matters of dispute on the Application, the most urgent of which are the claims to set aside a 10 Day Notice and a One Month Notice, because this determines whether the tenancy will continue or not. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I advised the Parties that I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice and

the One Month Notice at this proceeding. Therefore, his other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began in the summer of 2009, with a current monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlords a security or a pet damage deposit. This may be because the Parties are related – second cousins; however, it appears that they aim to treat the tenancy as formally as possible, to stay within the tenancy laws.

The Parties agreed that the Landlords served the Tenant with the **One Month Notice**, which was signed and dated January 2, 2022, and which has the rental unit address. The One Month Notice was served by taping it to the rental unit door on January 2, 2022, with an effective vacancy date of February 28, 2022. The One Month Notice was served on the grounds that:

- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the Tenant put the Landlord's property at significant risk;
- 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; and
- the Tenant has assigned or sublet the rental unit/property without the Landlord's written consent.

The Parties also agreed that the Landlords served the Tenant with the **10 Day Notice** which was signed and dated January 2, 2022. The 10 Day Notice has the rental unit address, it was served by being taped to the rental unit door on January 2, 2022, and it has an effective vacancy date of January 15, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlords \$700.00 of rent that was owed to them on January 1, 2022.

#1 VALIDITY OF THE ONE MONTH NOTICE

As the burden of proof in this matter is on the Landlords on a balance of probabilities, I started by asking them why I should confirm the One Month Notice, rather than cancelling it, as the Tenant has requested. The Landlords said

The One Month Notice is regarding quite a few items. First, the trailers he has parked in the front. I've been doing work behind the property and have asked [the Tenant] in February of 2021 to consider moving those trailers, because I have to do work there. He did move one briefly, but they were quickly moved back. I can't start the job or do the job because the trailers were in front of the yard. We talked to him continually for the past year. He signed every page of the tenancy agreement. He finally moved them in late March, but replaced it with a sailboat

Counsel responded for the Tenant, as follows:

See the Tenant's affidavit at page 3 at the very bottom, there's a heading: "2 Trailers on Property" before paragraph 24. It's not disputed that there was a term to remove those [trailers]. However, he is disabled and has limited mobility. Neither trailer belongs to him, so he couldn't take as quick action. At paragraph 25 of his affidavit, the Tenant notes that the Landlords have had no issue with them. At paragraph 26, he notes that the Landlord met the owners of one of the RVs when winterizing them on the property.

The Landlords have expressed that the presence of the trailers was a benefit, and not a detriment, because it prevents passers-by from using the property for U-turns. Yes, part of the agreement is about the trailers, and yet he tried to move those. They finally moved them. That's resolved, and I don't think he's playing games. It's a property that he's living on. It has been cured. If the sailboat needs to be moved, it can be moved.

I asked the Tenant why he put a sailboat where the trailers had been. He said:

He did ask me to move the trailers to look at a drain, and I immediately moved it. It is dormant now – the drain has no function. As for the trees, the hedge in the front is easily accessible there. They've been there for 10 years and never had an issue, no problems.

The Landlords said:

He has no idea about that drain, he is not a manager. The trees have not been cut. See his own pictures - his boat is buried into the trees. We gave him a courtesy call, saying they are in the way. The boat was there two days later. [The Tenant] doesn't know what I'm doing. This is our property and he knows it. I never asked him to move it, himself. I don't have an issue that they were there.

I asked the Landlords how the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, as claimed in the One Month Notice. They Said that when the other tenant moved in, the Tenant was intrusive, which interfered with the other tenant's business. They also said: "We are the people here, and he's interrupting us a lot."

The Landlords referred me to the Exhibits they had submitted to the RTB; however, as noted above, I cannot consider their documentary submissions, because they did not serve the Tenant with evidence, nor serve the RTB in accordance with the Rules.

I asked the Landlords if they had talked to the Tenant about these concerns, and they said: "Many, many, many times."

The Landlords said the Tenant started a fire in the yard, which was only 10 feet from the other tenant's business.

The Tenant responded to this, as follows:

All those allegations are completely erroneous. I have a neighbourly relationship with the Landlords, We get along great, talk all the time. I'm in no position to make any decisions. No arguments or disrepute. We get along fine and great.

Counsel added:

What this property is, it's a detached home on a lot. And there's an attached lot with this towing company with a trailer, cars - not an apartment building. To access [the other tenant's business], you have to pass by his property. Often their clients attend [the Tenant's] property.

The fire – a date is very important. It happened on August 25, 2021 – but that document about starting fires is from September of that year. They entered an agreement subsequent to the fire, so, this is a moot point, because they have agreed to continue the tenancy afterwards.

The Landlord said:

Yes, I understand what he said about that, but when there is a fire there, a complaint from the City, and ongoing issues. I understand what he says about September [new agreement despite the fire]. The fire was an evictable

Leave these people alone; they have a business to run. You just can't go over there and start talking about making deals. He has been told this multiple times. They have a business and they have employees. [The Tenant] needs to live his life – the rent is due on the first at 12 o'clock; the trailers were not moved at the proper time. It has cost us money.

The big thing is bothering those tenants and not paying on time. You have to look at our whole package . It's hard for us to say it in the short time. It is a package that we submitted. The fire is a fire. If someone started a fire 10 feet from your office, and going to their property... Do you want to move your trailer. . . Do you want to rent a room. . . [The Tenant] had no authority to do that, It would break the rules - even for our own insurance. Leave them alone. We can't have a Tenant doing this on the property.

The Landlords referred me to their numerous letters and other proof of their claims; however, as noted above, they did not serve this evidence properly, therefore, I cannot consider it in making my Decision.

The Landlords did not comment on the other grounds for having served the One Month Notice to the Tenant.

#2 VALIDITY OF THE 10 DAY NOTICE

I asked the Landlords why I should confirm the 10 Day Notice, rather than cancel it, as the Tenant has requested. The Landlords said:

January 1st - the years before - in 2021, [the Tenant] was paying his rent in cash on the 1st. All along paying his rent in cash. September, October, November, December, he paid \$650.00 on time. I issued a receipt.

He did not pay me on January 1st. He said he had the rent, but he said on his Exhibit - re the expedited hearing – on page three - that he did have the money, but he refused to pay and he got very angry about the trailers. He said: 'They're

not leaving; they're staying', and he slammed the door in my face.

He ended up writing a cheque, but our rental agreement is cash. He had plenty of time to give us the cash rent. He provided a personal cheque.

I asked the Landlords if the Tenant owes them any rent money now, and they said: "He owes \$700.00 for January 1st and \$700.00 for April 1st."

Counsel responded, as follows:

They have two cheques in their possession, one for January and one for April. Counsel referred me to the Tenant's affidavit affirmed on March 21, 2022, in which the Tenant affirmed the following:

January 1, 2022, Rent

15. On or about January 1, 2022, at approximately 10:30AM, [the Landlord] unexpectedly attended my Unit and knocked on the door to collect rent from me. I opened the door in my bathrobe and saw [W.C.] standing 10 feet away from my door, in my driveway. [W.C.] informed me that she had come to collect January's rent.
16. [W.C.] asked me if I had the rent, and I told her that I did. Attached as **Exhibit "C"** to my affidavit is a copy of my account information showing the withdrawal of January's rent from my account on December 30, 2021.
17. I closed the door, went upstairs to get decent and to get the rent payment in cash ready. By the time I went downstairs and opened my door – after approximately five (5) minutes – to give her the rent money, she had already left. I was under the impression that [the Landlord] had gone to the other tenant in the property behind the Unit to collect their rent, and that she would be returning to collect my rent as usual, but she did not.
18. As a result, on January 3, 2022, I called [W.C.] and informed her that I had January's rent ready since the first of the month and that I would like to pay it. [W.C.] hung up the phone on me after I informed her that I wanted to pay the rent. Attached as **Exhibit "D"** to my affidavit is a screenshot showing my call to her.

19. On or about January 4, 2022, as [W.C.] had refused to accept my rent previously, I contacted the Residential Tenancy Branch and they advised that I should pay January's rent by cheque to my Landlords via registered mail, so I did. Attached as **Exhibit "E"** to my affidavit is a copy of the registered mail receipt and delivery confirmation.
20. My Landlords did not cash my January's rent cheque. Instead, they initially alleged that my rent was paid late, and later took the position that I have not paid rent for January 2022, despite repeated attempts to do so.
21. On or about February 1, 2022, when both my Landlords again came to my door to collect February's rent, since they had not cashed my January's rent cheque, I attempted to pay them \$1,400.00 being the rent for January and February 2022. To protect myself, I had prepared a hand-written note for my Landlords to sign acknowledging receiving rent for both months. Attached as **Exhibit "F1"** to my affidavit is a copy of that handwritten note and attached as **Exhibit "F2"** is the withdrawal slip showing that I withdrew \$1,400.00 on January 31, 2022, at 4:50PM.
22. My Landlords refused to accept rent for January 2022, instead only taking \$700.00 from me and issuing a rent receipt for same. Attached as **Exhibit "G"** to my affidavit is a copy of my Landlords' rent receipt for February 2022.
23. I believe my Landlords are refusing to accept my January rent as a means to evict me at a later time.
[emphasis in original]

I reviewed the Exhibits referred to in the Tenant's affidavit, and I find that they are as stated in his affidavit.

Counsel said:

So briefly, [the Landlord] attended to collect rent. [The Tenant] was improperly dressed, so he went upstairs to get dressed .. she would not accept it in cash. So, he sent her a cheque, which she has not cashed. They have refused the rent, and he has the funds in his account. This is just being used to further the 10 Day Notice

It is apparent that this is a family dispute based on a long-term tenancy. Things were informal in this family-related tenancy, and they had become more formalized progressively. It doesn't meet the threshold of warranting the eviction of someone who has lived there a very long time, has raised a child there.

The Landlords are treating the property as theirs to use as they want and directing the Tenant to do whatever they want. The Landlord should not be infringing on whether you have a trailer or not, or whether you say hi to your neighbour.

Based on the evidence provided, despite the relaxed rules of evidence - those are unsworn statements from [the other tenant] – he should have attended and been subject to cross-examination. So, the One Month Notice should be dismissed. Same with the 10 Day Notice – they chose not to cash his cheques. Getting cash each month to get rent is difficult for this disabled person.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 VALIDITY OF THE ONE MONTH NOTICE

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) 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,

...

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

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant failed to move trailers when asked, and disturbed another tenant on the property. However, the Landlords acknowledged that the Tenant had moved the trailers by the date of the hearing, although, he replaced them with a sailboat. The Landlords said they incurred costs, as a result of the trailers being there, but they did not provide any admissible, supplementary evidence to support this claim.

When I consider all the admissible evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I find from the Landlords' testimony, as I have not considered their documentary submissions, that the Tenant may be an annoyance to the Landlords and the other tenant at times. However, I find that the Landlords have not provided sufficient cause to end this long-term tenancy on a balance of probabilities. Accordingly, and pursuant to section 62 of the Act, I cancel the One Month Notice and find that it is void and unenforceable.

#2 VALIDITY OF THE 10 DAY NOTICE

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is

an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

. . .

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlords said that they were owed \$700.00 in unpaid rent for January 2022 and \$700.00 for April 2022. As the latter payment was not grounds for serving the 10 Day Notice on January 22, 2022, I find that it is not relevant to my considerations.

Further, the Tenant's evidence is that he had sufficient funds to pay rent to the Landlords on January 1st to the present.

I find from the Tenant's attempts to pay rent to the Landlords in January 2022, that this 10 Day Notice is without merit. I find that the Parties may irritate each other; however, I also find that the reasons presented by the Landlords in their testimony for evicting this long-term Tenant are insufficient to meet the requirements of the Act.

I find that the Tenant had the means to pay the rent on January 1, 2022, and that he attempted to pay it that day when asked, however, the Landlord departed before he could get the funds. The Tenant called the Landlord about the rent payment, but the Landlord ended the call. The Tenant made further efforts to pay, by following the recommendations of the RTB in sending a rent cheque via registered mail. The Tenant's evidence shows that this mail was delivered to the Landlords, establishing that they have his rent cheque, but have not cashed it. As a result, and pursuant to section 62 of the Act, I cancel the 10 Day Notice and find that it is void and unenforceable.

Based on the evidence before me overall, and on a balance of probabilities, I find that the Tenant is successful in his Application to cancel the One Month and the 10 Day Notices. I find the Landlords provided insufficient evidence to meet their burden of proof regarding the validity of these Notices. The One Month and the 10 Day Notices are void and unenforceable. The tenancy will continue until ended in accordance with the Act.

The Tenant's other claims are dismissed with leave to reapply

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice and the 10 Day Notice, as the Landlords failed to provide sufficient evidence to meet their burden of proving the validity of the One Month Notice and the 10 Day Notice.

The One Month and the 10 Day Notices are cancelled and are void and unenforceable. The tenancy will continue until ended in accordance with the Act.

The Tenant's other claims are dismissed with leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 13, 2022

Residential Tenancy Branch