



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, PSF, RR, LRE, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order to dispute a rental increase, pursuant to section 43;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants JT and JF and the landlord attended the hearing. The landlord was represented by agent JP (the landlord). Tenant JF was assisted by advocate GF. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Update of Addresses

At the outset of the hearing the landlord corrected the addresses of the rental unit and JT.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except the cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Tenant JT occupied the rental unit prior to December 01, 2021. On or around November 26, 2021 tenant JF moved to the rental unit. Both JT and JF signed a periodic tenancy agreement on December 01, 2021. JF moved out on March 27, 2022. JF's current address for service is recorded on the cover page of this decision.

Both parties agreed that monthly rent of \$1,000.00 is due on the first day of the month. The landlord collected and holds a security deposit of \$400.00 and a pet damage deposit of \$400.00.

The November 15, 2019 tenancy agreement was submitted into evidence. It indicates the tenant is JT, monthly rent of \$800.00 is due on the first day of the month. The December 01, 2021 tenancy agreement indicates the tenants are JT and JF, monthly rent of \$1,000.00 is due on the first day of the month.

Both parties agreed the landlord served the Notice and the tenants received it on January 13, 2022. The tenants submitted this application on January 17, 2022 and JT continues to occupy the rental unit.

The Notice was submitted into evidence. It is dated January 13, 2022 and the effective date is February 15, 2022.

The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.

The details of the cause are: "Tenant smokes weed inside the unit and this is a huge fire hazard. Tenant is very rude and aggressive and tried to damage landlord business downstairs. Police is aware and we have a file number [redacted for privacy]."

The landlord affirmed JF is very aggressive and had an altercation with the landlord in early January 2022. The landlord provided a police file number related to the altercation.

JF stated he had an altercation with the landlord about parking and repairs in the rental unit. JF accidentally slammed the landlord's business door and apologized. JF testified he does not smoke in the rental unit. JT agrees with the testimony offered by JF. The landlord said he is not sure if JF apologized.

JT and JF affirmed that only JT wishes to continue the tenancy.

Analysis

I accept the undisputed testimony that the landlord served the Notice and the tenants received it on January 13, 2022. I find the tenants' application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(d) of the Act states:

- 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 testimony offered by JT and JF was detailed and convincing. The testimony offered by the landlord was vague. I find JF apologized for the altercation with the landlord. I find the landlord failed to prove that the tenants significantly interfered or unreasonably disturbed the landlord, seriously jeopardized the health or safety of the landlord or put the landlord's property at significant risk.

Based on the testimony offered by both parties, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

As the tenants are successful, I find the tenants are entitled to recover the \$100.00 filing fee.

For the purpose of educating the parties, I reference the following legislation and Residential Tenancy Branch Policy Guidelines (RTB PGs).

A tenant may end a periodic tenancy by giving notice to end tenancy, per section 45 (1) of the Act:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The parties must serve tenancy documents in accordance with section 88 of the Act:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

RTB PG 13 states:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due.

Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

D. DEBTS OR DAMAGES

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.

[...]

E. ENDING A TENANCY

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been

signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continue paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

Example: Dennis and Warren are co-tenants. Warren decides to give written notice to their landlord and moves out of the rental unit immediately, even though the effective date of the notice is not until the end of the following month. As a result of the notice, the tenancy will end for both Warren and Dennis at the end of the following month. Even though Warren moved out immediately, he is still responsible for paying the final month's rent, as he is a party to the tenancy agreement, and the tenancy agreement does not end until the end of the following month.

Both Warren and Dennis can be held accountable if any terms of the tenancy agreement are breached (such as unpaid rent or damage to the unit) between Warren's

Conclusion

The tenants' application for an order to dispute a rental increase, an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, an order to reduce the rent for repairs, services or facilities agreed upon but not provided and an order to restrict or suspend the landlord's right of entry is dismissed with leave to reapply.

The Notice dated January 13, 2022 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from their rent payment for May 2022 to recover their filing 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: April 14, 2022

Residential Tenancy Branch