



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, LAT, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 28, 2022, to be allowed to reduce rent for repairs, for repairs to the rental unit, to suspend or set conditions on the landlord’s right to enter the rental unit, to be authorized to change the locks, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply should the tenancy continue.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence

submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on February 10, 2007. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenants paid a security deposit of \$600.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on May 1, 2022.

The reason stated in the Notice was that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- puts the landlord's property at risk.

Counsel for the landlord submit that the tenants have be significantly interfering with the landlord's right to inspect the premises.

Counsel submits that on April 19, 2022, the landlord inspected the premises and determine that there was damage caused by the tenants and wanted the repairs to be completed and would reinspect the premises on June 13, 2021. Counsel submits the landlord did attend on June 13, 2021, as for the formal written notice of inspection, and the tenants did not open the door.

Counsel for the landlord stated that on June 16, 2021, the landlord asked if they could attend for an inspection on June 18th and the tenants informed the landlord that that date would not work for them.

Counsel for the landlord submits that on June 25, 2021, the landlord informed the tenants that they would be coming to the rental unit on June 26, 2021; however, the tenants again responded that this date would not work for them.

Counsel for the landlord submits that on June 29, 2021, the landlord served the tenants written notice for an inspection to occur on June 30th at 7pm. At which time the tenants informed the landlord that they had no right to enter the house and will not allow them entry. Counsel submit that the landlords attend on June 30, 2021, to inspect the premises; however, the tenants would not let them in to the rental unit and their car was in the driveway.

Counsel for the landlord submits that on December 15, 2021, that the landlord provided formal written notice for an inspection to be conducted on December 18, 2021, at 10:30am, for a safety inspection to check the smoke alarms, and waterlines. Counsel submits that the tenants stated unless it was to provide the necessary repairs, that the tenants would not allow access for the inspection. Filed in evidence is a copy of the tenants' response dated December 15, 2021

Counsel for the landlord submits that on February 1, 2022, the landlord had retained a lawyer, which a letter was sent to the tenants to arrange an inspection the tenant responded was, "until we have orders from the Tenancy Branch that demand you and .. come to the house for any reason, you will not be allowed to do so".

Counsel for the landlord submits that on March 23, 2022, the tenant were given written notice of the inspection for March 27, 2022, at 2:00 pm. Counsel submits on March 27, 2021, the tenants refused access for the inspection.

Counsel for the landlord submits that on March 28, 2022, the landlord issued the Notice for significantly interfering with the landlord.

The tenants testified that they do not deny that have refused access to the landlord. The tenants stated at the April 19, 2021, inspection the landlord yelled at their daughter regarding painting, when the male tenant left the room. The tenants stated that the landlord had no right to speak to their child. The tenant stated that at the inspection the landlord had determined that it was damage caused by them, which they believe it was

normal wear and tear and they were not prepared to make the repairs by June 13, 2021, as noted in the landlord's letter dated May 3, 2021.

The tenant stated that the landlord also made false allegation of their son using drugs.

The tenants testified that they were not against the inspection; however, they wanted the landlord to hire a qualified 3rd person to do the inspection as they were not going to let the landlord into the rental unit.

The tenants testified that the landlord has intimidated them by sending a letter from a lawyer. The landlord also intimidated them when they brought their daughter and another stranger to the home and were taking pictures. The tenant stated that the landlord would scream at them to let him in and would make gestures of choking.

Counsel submits that having a lawyer send a letter to the tenants' regarding access is not harassment. Counsel submits the photographs the tenants have provided do not support the landlord was yelling or making choking motion, and if this was true the tenants could have provided a copy of the video, rather than just a picture as this was alleged to have been captured on their video camera. Counsel submits that the photographs only show that landlord was at the premises to conduct the inspection, and left after the tenants refused access.

The landlord responded at no time did they yell at the tenants' daughter and if this was true, it would have been reasonable for the female tenant to intervene as they work from home. The landlord stated at no time did they make choking motions to the tenants. The landlord stated that his brother was with him to take pictures of the premises and their daughter was there to assist them with the inspection.

At the end of the hearing, the landlord stated if the Notice is upheld they would be agreeable to extend the effective date of the Notice until June 30, 2022, to give the tenants additional time to find alternate housing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing; I find that the landlords have provided sufficient evidence to show that the tenants have :

- significantly interfered with the landlord

In this case, the evidence supports that the tenants have denied access to the rental unit on June 30, 2021, December 18, 2021, and again on March 27, 2022, after getting written notice of the inspection. The tenant are not required to be present for an inspection under the Act and do not have the right to demand the landlord have an independent qualified third-party attend. The landlord is the owner of the property and has the rights to inspection the rental unit under the Act, and if the tenants did not want to be present when the landlord attended they could have left the rental unit for the inspection.

Further, the tenants did not have any Orders from the Director that would allow them to restrict the landlord's right to access the rental unit, and in any event, the Director would not take away the landlord's rights to inspect their own property. If the tenants did not want to be in the presences of the landlord the option to the tenant was to vacate the premises during the inspection or alternately have someone else remain in the rental unit on their behalf. At no time do the tenants have the right to interfere with the landlord's lawful rights under the Act, by refusing access for an inspection.

If the tenants did not agree with the written notice they received from the landlord on May 3, 2021, to make repairs for damage caused to the rental unit by June 13, 2021. The tenants could have made an application for dispute resolution and have an Arbitrator determine if this damage constitutes normal wear and tear or if the damage was caused by neglect of the tenants.

Further, I am not satisfied that tenants have been harassed as defined, as the landlord was at the property for legal purposes, this does not constitute harassment. Had the tenant's allowed access to the premises this issue would have been resolved. Rather, the landlord had to attend the property on several occasions in the attempt to conduct an inspection, and even had to resort to obtaining legal counsel to act on their behalf.

I find the Notice, has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice. The tenancy will end in accordance with the Act.

As the landlords have agreed to extend the effective date of the Notice to June 30, 2022, to give the tenants more time to find alternate housing, I find it appropriate to extend the effective vacancy date in the Notice to **June 30, 2022**, pursuant to section 66 of the Act. Therefore, I find the landlords are entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenants' application, I find that the landlords are entitled to an order of possession effective **June 30, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel the Notice, is dismissed. The landlords are granted an order of possession.

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: May11, 2022

Residential Tenancy Branch