Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHAMPLAIN HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, LRE, OLC, LAT, MNDL-S, OPC, FFL

Introduction

The tenants dispute a *One Month Notice to End Tenancy for Cause* (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). They also seek other relief under the Act. By way of cross-application the landlord seeks an order of possession based on said Notice, and a monetary order for costs related to a broken door. The landlord also seeks recovery of the cost of the filing fee.

Attending the dispute resolution hearing were the two tenants, the landlord, and the landlord's in-house property manager. The parties were affirmed, no significant service issues were raised, and Rule 6.11 (the prohibition on recording the hearing) of the *Rules of Procedure* (the "*Rules*") was outlined.

The tenant (J.M.) explained that it was his intention to record the hearing. I explained that as per Rule 6.11 of the *Rules*, "Persons are prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording." The tenant then confirmed that he was not, and would not be, recording the hearing. The tenant is thanked for his compliance with the *Rules.*

It was then explained to the tenants that they (or any party for that matter) could request a copy of the recording of the hearing after the conclusion of the hearing. Rule 6.12 of the *Rules* states, *inter alia,* that

> A party may request a copy of their recording. A party may also provide written authorization allowing another person, including a transcription company, to request a copy of their recording. Due to practical and operational limitations, unless there are extraordinary circumstances, a person may only request a recording 20 days after the arbitrator concludes the dispute resolution hearing.

Preliminary Issue: Claims Unrelated to Notice

Rule 2.3 of the *Rules of Procedure* states that "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." This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

It is my finding that the only issues addressed in this decision are to be those directly related to the Notice. As such, the unrelated claims beyond those, for both parties, shall be dismissed *with* leave to reapply. Only the issues listed below will be dealt with. The parties acknowledged their understanding of this narrowing of issues.

Therefore, the tenants' requests for a lock change authorization, an order for landlord compliance, and an order restricting the landlord's right to enter the rental unit, are dismissed with leave to reapply. Similarly, the landlord's claim for compensation is dismissed with leave to reapply.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in November 2021 and monthly rent is $1,050.00. The tenants paid a $525.00 security deposit. There is a written tenancy agreement in place.

On February 22 and February 23, 2022, the landlord issued the Notice by e-mail (to both tenants), by in-person service, and by posting a copy to the door of the rental unit. The tenant J.M. acknowledged receipt of the Notice but the tenant C.K. testified that they only saw the Notice in her email in May 2022.

A copy of the Notice was submitted into evidence. The landlord testified that the tenant J.M. had gotten into an altercation with a neighbour ("Ernie") over snow blowing. RCMP attended (on the tenant's behalf) to help diffuse the situation.

The tenant was “very belligerent” and was harassing the landlord through the landlord’s Facebook page, testified the landlord. The tenant also threatened to sue the landlord if the landlord didn’t address certain matters. Someone also tried to kick in the door of the rental unit, which caused damage to the jam. The door jam is now split, but the door is otherwise operational.

The landlord further testified that the landlord’s property manager conducted an inspection of the rental unit and it appeared to him that the tenant was producing marijuana or CBD tinctures. He noted that the humidity was quite high, and there is moisture inside the windows. He further testified that the tenant does not have a business license to operate any sort of business in the rental unit, that he does not have any permission from the municipality to do so and that he does not have a license to manufacture marijuana products.

The tenant J.M. testified that it was a third party who damaged the door. He further testified that he has no idea where the landlord got the idea that he was a marijuana dealer, he does “no such thing” as manufacture CBD products, and he does not condone these as such. He testified that he is a cleaner, and that he keeps cleaning products in the rental unit.

As for the moisture, the tenant testified that it has been terrible since the very start of the tenancy. The moisture is high he noted because of improper installation of vents in the windows. He showers every second day, but he leaves the fan on to ensure the moisture gets sucked out.

In his rebuttal, the landlord testified that the tenants need to pay for the door. As for the moisture, the landlord testified that the drains are for external moisture and that there is nothing wrong with the construction of the windows. He further noted that of the 24 rental units they manage this tenant is the only one with moisture issues. As for Ernie, he is not a tenant in the building; He owns the building next door.

Analysis

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. Where a tenant disputes a notice to end a tenancy, the onus shifts onto the landlord to prove the reasons why they issued the notice to end the tenancy.

Before turning to the grounds on which the Notice was issued, I will turn first to service. The landlord gave evidence that he served three copies of the Notice by e-mail, in person, and by attaching it to the door of the rental unit on or about February 22 and 23, 2022. Tenant J.M. testified that he received the notice honor about these dates. Tenant C.K. denied knowing anything about this until late May when she checked her e-mail.

Section 88(g) of the Act permits a landlord to give a notice to end tenancy to a tenant by attaching a copy to the door of the rental unit. Neither tenant denied that the notice to end tenancy was attached to the door. As such, it is my finding that both tenants were served with a notice to end tenancy in compliance with the legislation. To be frank, I find it highly unlikely that tenant C.K. only found out about this matter in late May 2022.

Turning now to the Notice itself, it was issued under the following sections of the Act:

47(1)(d), which states that a landlord may issue a notice to end tenancy when “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;

And section 47(1)(e)(i), which states that “the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that [. . .] has caused or is likely to cause damage to the landlord's property” may give a landlord a reason to issue a notice to end tenancy.

In this dispute, the landlord argues that due to the tenants’ actions someone came and tried to kick in the door which caused it to be damaged. The tenants dispute this claim and argue that it was some third party unrelated to either of them or invited by them.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has not provided sufficient evidence for me to find that the tenants were responsible for a third party’s damage to the door. In other words, the landlord has been unable to prove that whoever this third party was a person permitted on the residential property by the tenants.

The landlord further argued that the high moisture levels in the rental unit are creating a risk to the property. He also argued and submitted that the tenants are manufacturing marijuana related products without a proper business license or permit issued by any level of government. The tenants deny these allegations. Finally, I am not persuaded that the tenants have engaged in such conduct as to significantly interfered with or unreasonably disturb another occupant or the landlord.

Again, the landlord has not provided sufficient evidence for me to find that the tenants are responsible for the high moisture levels, that they're manufacturing CBD, or that they are engaged in any activity that breaches the tenancy agreement or the Act. Tenant J.M. admits in that he has a home-based business—cleaning. However, there is no evidence before me to conclude that the landlord's property or his lawful right thereto is in any way in jeopardy because of the tenant's cleaning business.

To reiterate: the onus to establish a ground for issuing a notice to end tenancy lays with the landlord. In this case, the landlord has simply not proven the grounds on which the notice to end tenancy was issued. For this reason, the tenants are entitled to an order canceling this Notice immediately. The tenancy shall continue until it is ended in accordance with the Act. The landlord's application to recover the cost of the application filing fee is similarly dismissed.

Conclusion

The Notice, signed by the landlord on February 22, 2022, is hereby ordered CANCELLED effective immediately.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 20, 2022

Residential Tenancy Branch