Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of two One Month Notices to End Tenancy for Cause dated February 15, 2022 (collectively, the "One Month Notices") pursuant to section 47;
- a Monetary Order of $4,945.35 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants and the Landlord's agent BB attended the hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

During the hearing, the parties did not raise any issues with respect to service of documents. BB confirmed receipt of the Tenants' notice of dispute resolution proceeding package and evidence. The Tenants confirmed receipt of the Landlord's evidence.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the One Month Notices?
2. Are the Tenants entitled to compensation of $4,945.35?

3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 1, 2017 with a previous owner of the rental unit, and is currently month-to-month. Rent is presently $1,248.45, due on the first day of each month. The Tenants paid a security deposit of $600.00 and a pet damage deposit of $600.00, which are held in trust by the Landlord.

Copies of the two One Month Notices have been submitted into evidence. Both are dated February 15, 2022 and have an effective date of March 31, 2022. One of the two notices (the "First One Month Notice") states the ground for ending the tenancy to be "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The other notice (the "Second One Month Notice") states the ground for ending the tenancy to be "Tenant or a person permitted onto the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord". Both One Month Notices provide the following details of cause (portions redacted for privacy):

> *On September 10th, 2021 [the Tenant WD] derogatively spoke ill of the property to an appraiser appraising the building that "there are a LOT of problems with the building, rotten wood on the inside of it, not the best units around and sewar (sic) issues etc". Letter given on October 8, 2021 warning that behavior was unacceptable and could lead to an eviction. A second appraisal was necessary to be done with Zero contact with tenants in [dispute address]. The letter stated: If any further behavior like this continues at any time after you receive this letter you will receive a one month eviction notice for cause. For example this includes making any negative comment about the property or landlord or anything to do with the building to any person, contractor, handyman realtor, any authorities, any other tenants at the property, on social media or basically any person beside yourselves or your guests the same warning applies and you will be swiftly evicted.*

On October 22, 2021 while the caretaker and handyman were doing outside repairs [the Tenant ND] came out screaming at the handyman to not touch her ladder. Handyman has since refused to do work for them and the property. Letter given on December 18, 2021 as an absolute final warning that there would be a definite eviction if further occurs. On February 14th between 1 pm and 1:30 pm a prospective tenant for [neighbouring unit] accidentally knocked on [the Tenants'] door ([rental unit]) instead of [neighbouring unit] and [the Tenant WD] began speaking with the prospective tenant saying that the units are not good, maintenance never gets done and there are a lot of problems with the place. The prospective tenant has declined renting the available unit. On all of these matters there is proof as well as witnesses.

The Landlord's evidence indicates that the First One Month Notice was served in person on the Tenants on February 15, 2022. The Landlord submitted a video which appears to show the Tenant WD throwing the First One Month Notice into a trash bin outside the rental unit. BB confirmed she served the Second One Month Notice by leaving in the Tenants' mailbox on February 16, 2022. The Landlord submitted a signed Proof of Service document in support.

BB testified that on September 10, 2021, an appraiser attended at the rental unit. BB testified that the Tenants were informed about the appraisal in advance and were asked to have the place cleaned so that the Landlord could obtain the highest appraisal value.

BB testified that during the appraisal, the Tenant WD made various statements about the rental unit and gave a "derogatory impression" to the appraiser. The Landlord submitted two video recordings taken by BB during the appraisal.

In the first video, the Tenant WD and BB can be heard having the following exchanges:

WD: "They fixed that… and I think it's leaking again."
BB: "What's that?"
WD: "Around the toilet."
BB: "Oh, you think it's leaking again?"
WD: "Yeah I think so."

[…]

WD: "Just push the curtain back if you want to see."

WD: “See there’s no way you can get down in there.”
BB: “Okay. We’ll take care of it.”

[…]

BB: “Can you not talk about the things that are wrong in front of him?”
WD: “Well the thing is, what’s wrong also goes into the—what it’s worth. So you have to know both ways.”
BB: “But you don’t have to tell him that.”
WD: “Oookaay.” (laughs)

In the second video, WD and BB are speaking with the appraiser:

WD: “But they can’t—couldn’t fix it… ‘cause all the wood… [*indiscernible*] rotten. They got wood and vinyl windows.”

[…]

WD: “It used to be one house, on two lots.”
BB: “Ooh?”
WD: “And there’s one pipe going into the sewer, that’s it. And there’s four different units.”
WD: “It’s… not the best unit around, I would—”
BB: “I’ll check your bathtub. Like do you think maybe there’s just a little bit of hair in your bathtub and that’s why it’s draining slow?”
WD: “I don’t know, it’s been draining slow for years—”
BB: “Have you ever tried cleaning the hair out and stuff?”
WD: “Well you can’t get into it.”
BB: “Okay, yeah. I’ve got some stuff… we’ll take care of it.”
WD: “I used a plunger, but it didn’t work.”

BB stated that it was “inappropriate” for the Tenant WD to be “derogatorily speaking about the [rental] unit to give a bad impression” to the appraiser. BB testified she doesn’t believe the soffit is rotten. She stated that the Landlord will have a maintenance person look at it and replace the gutter. BB testified she doesn’t believe there is anything wrong with the sewer. BB stated that the sewer gets cleaned once a year and that there are no major issues.

BB testified that the appraised value came out to be lower than comparable properties nearby. BB testified that a second appraisal of the rental unit without contact with the Tenants ended up being $80,000.00 higher than the first appraisal.

BB testified that on October 22, 2021, she and a maintenance person, CP, were at the rental unit to fix the gutter. When CP went to get a ladder, the Tenant ND came out "screaming", telling them to not touch the ladder. BB testified that as a result of the incident, CP has refused to return for work at the property. BB also explained that CP was fixing the front and back doors of the rental unit but received negative comments and demands from the Tenants. The Landlord submitted a written statement from CP dated October 26, 2021.

BB stated the third incident occurred with a prospective tenant who had been pre-approved for a neighbouring unit. BB stated that the Tenants told the prospective tenant that "it's not a good place" and "no maintenance gets done".

The Landlord submitted copies of the warning letters to the Tenants dated October 8, 2021 and December 18, 2021.

WD testified he did tell the appraiser that the rotten boards are beneath the eavestroughs and soffits. WD stated he received this information from a person who came to do an estimate for the previous owner.

WD testified that when the prospective tenant for next door came to the Tenants' unit, the Tenants had towels rolled up underneath the door because the door "hadn't been fixed right". WD stated "she asked me, and I told her".

The Tenants argued that the Landlord cannot restrict them from talking to people, using social media, or having their comfort zones.

The Tenant ND stated she did not scream at the maintenance person CP. ND explained she is hearing impaired and talks louder. ND testified she was inside and told CP that the ladders belonged to her and to put them back. ND stated they could have asked her and there would have been no problem.

ND stated there were seven occasions between August and November 2021 when BB entered the rental property without notice, as follows:

- August 2, 2021

- August 20, 2021
- September 8, 2021
- September 24, 2021
- October 1, 2021
- October 8, 2021
- November 14, 2021

ND testified that on November 14, 2021, BB walked across the Tenants' lawn, looked in their bedroom window, "snooped" behind their barbeque, and looked into their kitchen window. ND testified that on other occasions, BB would knock on the door, ask to come into the rental unit, write things down in her notebook, and then leave.

The Tenants claim damages of $4,945.35, or 3 months of rent plus the Tenants' $600.00 security deposit, for what they allege to be "harassment" and "elder abuse".

In response, BB explained that the rental unit is part of U-shaped complex, with a common grass area. BB testified that when a person walks into the courtyard, they are facing the windows for a unit in any given direction.

BB testified that every time she was on the property, the Tenants would watch her from the sliding door and want to come out and talk. BB denied she had knocked to demand entry. BB stated it was the Tenants who wanted to talk to her about their complaints with the rental unit.

Analysis

The standard of proof in this 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.

1. Are the Tenants entitled to cancellation of the One Month Notices?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

(a) not earlier than one month after the date the notice is received, and

(b) 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.

In this case, the One Month Notices are dated February 15, 2022 and have an effective date of March 31, 2022. I have reviewed copies of the One Month Notices and find that they comply with the requirements set out in sections 52 and 47(2) of the Act.

Based on the parties' evidence, I find that the First One Month Notice was given to the Tenants in person at the rental unit on February 15, 2022, and the Second One Month Notice was left in the Tenants' mailbox on February 16, 2022. Accordingly, I find that the Tenants were served with the First One Month Notice on February 15, 2022, in accordance with section 88(a) of the Act. I further find that the Second One Month Notice was served on the Tenants in accordance with section 88(f) of the Act. Pursuant to section 90(d) of the Act, the Tenants are deemed to have received the Second One Month Notice on February 19, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until February 25, 2022 to dispute the First One Month Notice and February 26, 2022 to dispute the Second One Month Notice. Records of the Residential Tenancy Branch disclose that the Tenants submitted this application on February 22, 2022. I find the

Tenants made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the Landlord has issued the One Month Notices to end the tenancy on two grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

With respect to the first ground, section 47(1)(h) of the Act states:

> **Landlord's notice: cause**
> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> […]
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The Landlord did not identify which term of the tenancy agreement was alleged to have been breached by the Tenants, and why such a term is material to the tenancy agreement. I note that this information is not mentioned in the One Month Notices or the Landlord's warning letters dated October 8, 2021 and December 18, 2021. I understand the Landlord abandoned this ground for the purposes of this hearing. Due to insufficient evidence, I find that the Landlord has not established cause under section 47(1)(h) for ending the tenancy.

With respect to the second ground, section 47(1)(d)(ii) of the Act states:

Landlord's notice: 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
>
> > […]
> >
> > (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, […]

Based on the Landlord's evidence and BB's testimony, I understand the Landlord's position to be that the Tenants have seriously jeopardized a lawful right or interest of the Landlord as a result of the incidents that occurred on September 10, 2021, October 22, 2021, and February 14, 2022. I will now address each of these three incidents.

Regarding the September 10, 2021 incident, I do not find the comments made by WD during the appraisal to have seriously jeopardized a lawful right or interest of the Landlord. I have reviewed the two video recordings submitted by the Landlord and have reproduced a transcript of WD's comments above. I do not find WD to have knowingly or maliciously made any false comments. I find that WD made some complaints, which BB agreed to look into. I note that the maintenance person CP's statement confirms the Landlord did subsequently undertake repair work for the gutter. I also observe that WD's comments were fairly brief. In my view, the appraiser is an expert who is examining the rental unit first-hand, and can exercise professional judgment in weighing WD's comments. Finally, there are many factors other than the Tenants' presence which could have led to a higher appraised value on the second attempt. Although WD's comments may not have been tactful or considerate, I am not satisfied that WD has *seriously* jeopardized a lawful right or interest of the Landlord solely because of the comments that he made during the appraisal.

Regarding the October 22, 2021 incident with the maintenance person CP, I find the evidence is that CP did not ask the Tenants for permission to use their ladder, and that ND told him put the ladder back. I accept ND's testimony that she was calling to CP from inside the rental unit. I also accept ND's testimony that she is hearing impaired and speaks more loudly. I did find that ND spoke more loudly during the hearing. In addition, there is insufficient evidence before me to explain what repair work CP performed on the front and back doors, and whether such work was performed adequately. I accept that CP finds the Tenants to be "unpleasant" and has "enough other work" such the

Landlord now has to find a different contractor to work on the rental unit. However, I am unable to conclude on the available evidence that the Tenants were strictly at fault in this dispute. Moreover, I am not satisfied that a dispute between the Tenants and CP means that the Tenants have seriously jeopardized a lawful right or interest of the Landlord warranting eviction.

Regarding the final incident on February 14, 2022, I am not satisfied that WD has seriously jeopardized a lawful right or interest of the Landlord by virtue of his comments to the prospective tenant. I accept WD's testimony that the prospective tenant asked about the towels rolled up under the Tenants' front door. The evidence suggests that the Tenants believe the doors were not fixed correctly, and it appears there had been other issues with the rental unit (e.g. the gutters and the bathroom drain). I am therefore not satisfied that WD's complaints to the prospective tenant were entirely unsubstantiated. In my view, it is not sufficient that WD made negative comments about the residential property for the Landlord's right or interest to be seriously jeopardized. I find the Landlord is required to demonstrate, on a balance of probabilities, that WD knowingly gave false information to the prospective tenant. This interpretation is consistent with section 47(1)(j) of the Act, which permits a landlord to end a tenancy for cause if "the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property". I note that BB was not present when the prospective tenant visited the rental unit. Without any testimony or statement from the prospective tenant, I do not find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, that WD knowingly gave false information about the residential property. Indeed, I note that the Landlord did not choose section 47(1)(j) as a ground for cause on the One Month Notices.

I find the Landlord's chief complaint in issuing the One Month Notices to be that the Tenants, in particular WD, have made negative comments about the rental property to other people. The Landlord has demanded that the Tenants refrain from "making <u>any negative comment</u> about the property or landlord or anything to do with the building to any person, contractor, handyman realtor, any authorities, any other tenants at the property, on social media or basically any person beside yourselves or your guests" (emphasis added). I find this demand to be unduly restrictive because it purports to prohibit even negative comments which are truthful. The Landlord has not provided a legal basis for the sweeping nature of this demand.

Overall, I do not find there to be a cumulative effect from the above three incidents which has caused a lawful right or interest of the Landlord to be seriously jeopardized.

Based on the reasons given above, I conclude that the Landlord has not met the burden of establishing cause under section 47(1)(d)(ii) of the Act.

As the Landlord has not established cause under either section 47(1)(h) or section 47(1)(d)(ii), I order that both One Month Notices be cancelled.

2. Are the Tenants entitled to compensation of $4,945.35?

Section 67 of the Act states:

> **Director's orders: compensation for damage or loss**
> 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, the Tenants argue that they are entitled to monetary compensation for "harassment" and "elder abuse" by the Landlord. I understand the Tenants' core complaint to be derived from the seven incidents in which BB is alleged to have attended at the rental unit seeking entry without prior notice.

Section 28 and 29 of the Act state as follows:

> **Protection of tenant's right to quiet enjoyment**
> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Upon reviewing sum of the parties' evidence, I am satisfied that the Landlord and its agents have not breached sections 28 and 29 of the Act. In reaching this conclusion, I accept BB's testimony that she did not knock on the Tenants' door seeking entry into the rental unit without notice. I find BB's testimony to be credible and find on a balance of probabilities that it was the Tenants who would approach her about problems with the rental unit. The evidence on this application indicates that the Tenants have many complaints about the rental unit. I find, more likely than not, that the Tenants invited BB into the rental unit on certain occasions to talk about their complaints.

In addition, Residential Tenancy Policy Guideline 7. Locks and Access states as follows:

> The *Residential Tenancy Act* does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such

reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

Section 1 of the Act defines “residential property” to include the common areas and the parcel on which the rental building is situated.

Based on the foregoing, I find that the Landlord is not required to give the Tenants notice for BB to enter onto the common areas of the residential property. Furthermore, I am not satisfied on a balance of probabilities that BB has engaged in any unreasonable activity while on the common areas. I find the evidence suggests that BB attended at the residential property in order to serve written notices and to perform other general caretaker duties (e.g. accompany CP for repairs).

Moreover, I am satisfied that the Landlord or its agents have not “harassed” or “abused” the Tenants by issuing the warning letters dated October 8, 2021 and December 18, 2021. I find that the Landlord’s issuance of these letters does not constitute any harassment or abuse that may be compensable under the Act.

As I have determined that the Landlord and its agent BB have not breached sections 28 and 29 of the Act, I conclude that the Tenants are not entitled to any compensation under section 67 of the Act.

The Tenants’ claim for monetary compensation is dismissed without leave to re-apply.

3. Are the Tenants entitled to recover the filing fee?

As the Tenants have been partially successful on this application, I award the Tenants reimbursement of half their filing fee, pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct $50.00 from rent payable to the Landlord for the month of July 2022 or August 2022, at the Tenants’ choosing.

Conclusion

The Landlord has not met the burden of establishing cause for ending this tenancy.

The One Month Notices dated February 15, 2022 are set aside. The tenancy continues.

The Tenants' claim for monetary loss or money owed by the Landlord is dismissed without leave to re-apply.

The Tenants are authorized to deduct $50.00, on account of the filing fee partially awarded for this application, from rent payable to the Landlord for the month of July 2022 or August 2022, at the Tenants' choosing.

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: June 29, 2022

Residential Tenancy Branch