



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC (Tenant)
 OPC, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenant filed their application January 18, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause served January 14, 2022 (the “Notice”)
- For reimbursement for the filing fee

The Landlords filed their application April 04, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the Notice
- For reimbursement for the filing fee

This was an adjourned matter. The first hearing occurred May 06, 2022, and an Interim Decision was issued May 17, 2022. This Decision should be read with the Interim Decision.

The second hearing occurred June 23, 2022. The Tenant appeared at the second hearing. The Landlords appeared at the second hearing with Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to

record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence. Legal Counsel confirmed receipt of the hearing package and evidence for the Tenant’s Application and confirmed there are no service issues. The Tenant confirmed receipt of the hearing package and evidence for the Landlords’ Application and confirmed there are no service issues.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant evidence provided. I have only referred to the evidence I find relevant in this decision.

Preliminary Issues

Legal Counsel raised two issues at the start of the hearing. First, Legal Counsel sought to amend the Landlords’ Application to include a request for an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). Second, Legal Counsel sought to amend the Notice to include additional grounds.

1. Amending the Landlords’ Application

Legal Counsel submitted that the Landlords’ Application should be amended to include a request for an Order of Possession pursuant to section 56 of the *Act* because the Landlords noticed damage to a railing on the property earlier in the week. Legal Counsel submitted that the damage is further to damage which occurred in May and shows the Tenant is causing ongoing and further damage to the property. Legal Counsel pointed to evidence submitted to support an Order of Possession. Legal Counsel submitted that the Landlords’ Application should be amended because the damage is recent, the matter is serious, there is merit to the application for an Order of Possession pursuant to section 56 of the *Act* and the parties are present for a hearing.

The Tenant pointed out that the Interim Decision states that the parties are not permitted to amend the Applications. I asked the Tenant if they were prepared to address an application for an Order of Possession pursuant to section 56 of the *Act* and the Tenant said twice that they were. Given this, I told the parties I would allow the amendment. The Tenant then seemed confused about what would be considered during the hearing and disputed the Landlords’ Application being amended. The Tenant

said they thought they had to be cooperative when I asked if they were prepared to address an application for an Order of Possession pursuant to section 56 of the *Act*. The Tenant indicated they were not agreeable to the amendment.

I declined to amend the Landlords' Application and my full reasons for this are as follows.

Rule 4 of the Rules addresses amending Applications for Dispute Resolution.

Rule 4.6 of the Rules states that Amendments and supporting evidence "should be served on the respondents as soon as possible and **must be received by the respondent(s) not less than 14 days before the hearing**". (emphasis added)

Rule 4.2 addresses amending an Application for Dispute Resolution at a hearing and states:

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

(emphasis added)

The main concern about amending an Application for Dispute Resolution at a hearing is the possible prejudice this may cause to the respondent. Respondents must have adequate notice of the applications being made against them so that they can fully prepare to reply to them. The Rules regarding filing Applications for Dispute Resolution and Amendments, including the corresponding time limits for doing so, are in place to ensure respondents know the application being made against them and have time to prepare to respond to it.

I did not allow the Landlords to amend the Landlords' Application at the hearing in part because the Interim Decision states that the parties cannot amend the Applications.

However, more importantly, I did not allow the Landlords to amend the Landlords' Application because I found it would be procedurally unfair to do so. The Landlords did

not file and serve an Amendment on the Tenant not less than 14 days before the hearing as required by rule 4.6 of the Rules.

I acknowledge rule 4.2 of the Rules allows for an amendment at a hearing; however, this is only for amendments that can reasonably be anticipated. I do not accept that the Tenant could have reasonably anticipated that the Landlords would seek to end the tenancy pursuant to section 56 of the *Act*, a different section of the *Act* from the One Month Notice sections, in sufficient time to properly prepare to address this issue. I acknowledge the Tenant stated they were prepared to address a section 56 request; however, based on the subsequent discussion, I was not satisfied the Tenant understood the question being asked or the consequences of agreeing to an amendment. Further, I was not satisfied the Tenant agreed to an amendment with the full understanding that they did not have to do so.

2. *Amending the Notice*

Legal Counsel sought to amend the Notice to add additional grounds for ending the tenancy based on the damage that occurred four days prior to the hearing. Legal Counsel submitted that prejudice needs to be considered as it relates to the Landlords and Tenant and that it is extremely prejudicial to the Landlords to not hear the additional grounds at the hearing. Legal Counsel could not point to a legal basis for the request to amend the Notice. Legal Counsel did not seem to understand the difference between amending an Application for Dispute Resolution pursuant to the Rules and amending a notice to end tenancy. Legal Counsel relied on the Rules as the basis for amending the Notice.

The Tenant submitted that the Notice should not be amended.

I declined to amend the Notice and my full reasons for this are as follows.

Amending an Application for Dispute Resolution pursuant to the Rules and amending a notice to end tenancy are two distinct issues. The Rules do not address amending a notice to end tenancy. Section 68 of the *Act* addresses amending a notice to end tenancy and states:

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

(b) set aside or amend a notice given under this Act that does not comply with the Act.

(emphasis added)

Section 68 of the *Act* allows notices to end tenancy to be amended when they do not comply with the requirements of the *Act*, which is not the case here. Section 68 of the *Act* does not allow for amending notices to end tenancy at a hearing to add additional grounds for the notice.

Further, I find it extremely prejudicial to the Tenant to allow the Landlords to amend the Notice at the hearing. The Notice was issued in January. The very purpose of the Notice was to give the Tenant clear, full and proper notice of what the issue is and why the Landlords are seeking to end the tenancy. The Notice must reflect grounds to end the tenancy at the time it is issued. It would be unfair to the Tenant to add grounds to the Notice that they were not aware of, and were not in existence, when the Notice was issued. This hearing is about the validity of the Notice issued in January and whether the Landlords had grounds to issue the Notice in January. The hearing is not a general assessment of whether this tenancy should end due to all actions of the Tenant leading up to the hearing.

As well, it is not prejudicial to the Landlords to not amend the Notice. The prejudice alleged is a delay in the Landlords ending the tenancy based on recent behaviour of the Tenant. The Landlords do not have a right to end this tenancy immediately upon behaviour listed in section 47 of the *Act*, which is clear from the process set out in the *Act*. For behaviour listed in section 47 of the *Act*, the Landlords are entitled to issue a One Month Notice, the Tenant is entitled to dispute the One Month Notice and the

Tenant is entitled to a hearing on the validity of the One Month Notice. Further, if the circumstances are serious and urgent, the *Act* entitles the Landlords to seek an Order of Possession pursuant to section 56 of the *Act*. By not allowing the Landlords to amend the Notice, I am simply requiring the Landlords to go through the process set out in the *Act*, which is not prejudicial. I do note as I did in the hearing that section 56 of the *Act* is reserved for the most serious of circumstances such as violence or threats of harm.

Given the above, I proceeded to hear the Applications as filed, as well as the Notice as issued, without amendments.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to reimbursement for the filing fee?
3. Are the Landlords entitled to an Order of Possession based on the Notice?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

One page of a written tenancy agreement was submitted. The tenancy started November 15, 2021, and is for a fixed term ending October 31, 2022. Rent is \$1,500.00 per month due on the first day of each month.

The Notice was submitted. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

There is an addendum to the Notice which outlines incidents which occurred January 06 and 07, 2022 as follows. On January 06, 2022, the Tenant slammed the door to the rental unit very hard a few times. On January 07, 2022, the Landlords attended the rental unit and asked the Tenant to clean up the snow on the deck of the rental unit because it would become icy when it melts and can damage the stucco. The Tenant said they had cleaned the snow; however, the Tenant had not. The Landlords left the

rental unit. The Landlords then saw the Tenant throwing snow from their side of the deck to the Landlords' side of the deck. The Tenant also slammed doors very loudly.

The addendum to the Notice includes further allegations; however, none of these relate to the Tenant causing risk to the property.

The Landlords confirmed the Notice was posted to the door of the rental unit January 14, 2022. The Tenant testified that they received the Notice five days later because they were on a business trip.

Legal Counsel submitted that the Notice was issued due to the Tenant's behaviour outlined in the addendum to the Notice and stated that the Landlords were worried the Tenant's behaviour would continue and would damage the property. The only documentary evidence the Landlords relied on was their Affidavits. The Affidavits of the Landlords outline the same circumstances outlined in the addendum to the Notice. The Affidavits also state that the Tenant shovelled snow onto the Landlords' side of the deck in front of a door that leads to the downstairs of the house.

The Tenant testified that the Landlords came to the door of the rental unit and told the Tenant the snow on the deck was not properly shovelled and that this would damage the stucco. The Tenant testified that they told the Landlords they had shovelled the snow once but would do it again. The Tenant testified that Landlord C.V. called the Tenant a liar and things between the parties escalated from there. The Tenant said the Landlords left, and they went and shovelled the snow. The Tenant testified that they did not cause any damage to the property. The Tenant denied what is stated in the addendum to the Notice. The Tenant did not rely on any documentary evidence to support their position.

Analysis

The Notice was issued pursuant to section 47(1)(d)(iii) of the *Act* which states:

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

(c) the tenant or a person permitted on the residential property by the tenant has...

(iii) put the landlord's property at **significant** risk...(emphasis added)

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. I accept that the Notice was posted to the door of the rental unit January 14, 2022. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice January 17, 2022. The Tenant's Application was filed January 18, 2022, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlords who have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I do not find it necessary to decide whether the incidents on January 06 and 07, 2022 occurred as the Landlords state. I will assume for the purposes of this decision that the incidents did occur as the Landlords state in the addendum to the Notice and their Affidavits.

Section 47(1)(d)(iii) of the *Act* requires the Tenant to have put the Landlords' property at **significant** risk, which is not a low bar given the use of the word "significant". It is not any risk or any perceived risk that will allow a landlord to end a tenancy pursuant to section 47 of the *Act*. Ending a tenancy is a serious matter and the circumstances justifying it must also be serious.

I do not find the allegations of the Landlords to be serious. I do not accept that slamming doors or leaving snow on the deck presents a serious or significant risk to the Landlords' property. Nor do I accept that these actions are serious enough to warrant any real concern that the Tenant will cause further serious damage to the property. I find there is no compelling evidence before me showing the Tenant's actions caused damage to the property in any way. I find the Landlords are attempting to end this tenancy for what is a minor issue.

Given the above, I find the Landlords did not have grounds to issue the Notice pursuant to section 47(1)(d)(iii) of the *Act* based on the incidents outlined in the addendum to the Notice or Affidavits of the Landlords. I cancel the Notice. The Landlords are not entitled to an Order of Possession based on the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Tenant's Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

The Landlords are not entitled to reimbursement for the filing fee given they have not been successful in the Landlords' Application.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

The Landlords' Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 27, 2022

Residential Tenancy Branch