



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on March 15, 2022 (the “One-Month Notice”); and
- Return of their filing fee pursuant to s. 72.

This matter was originally scheduled for hearing on May 19, 2022 but was adjourned to July 19, 2022 due to issues with respect to service of the parties’ application materials.

J.M. and T.C. appeared as the Tenants. N.D. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the One-Month Notice was posted to the Tenants’ door on March 15, 2022. The Tenants acknowledge receipt of the One-Month Notice on March 16, 2022. I find that the One-Month Notice was served on the Tenants in accordance with s. 88 of the *Act* and was received on March 16, 2022 as acknowledged by the Tenants at the hearing.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on February 1, 2021.
- Rent of \$1,500.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$750.00 and a pet damage deposit of \$750.00 in trust for the Tenants.

A copy of the tenancy agreement and addendum were put into evidence by the parties. The subject rental unit is part of a multi-unit residential property.

The One-Month Notice, a copy of which was put into evidence, lists as the cause for ending the tenancy due to the Tenants has significantly interfered with or unreasonable disturbed another occupant or the landlord; has seriously jeopardized the health, safety, or lawful right of another occupant or the landlord; and put the Landlord's property at significant risk. Though not listed as a cause, the One-Month Notice describes how the tenancy agreement prohibits the consumption, growth, or storing of cannabis at the property.

At the hearing, the Landlord's agent indicates that the One-Month Notice was issued on the basis of the Tenant's breaking the tenancy agreement. She pointed out two clauses within the addendum that which were argued to have been broken by the Tenants, including the following:

- "No growth or storage of marijuana is permitted anywhere on the premises"; and
- "No smoking of marijuana is permitted on the premises".

The Landlord's agent testified that the floor in which the Tenants rental unit is located smells of cannabis. She says that the Landlord has received complaints from other

tenants on the floor with respect to the smell. The Landlord provides a copy of an email dated March 30, 2022, another dated March 9, 2022, and a third undated letter all of which complain of the smell emanating from the Tenants' rental unit. The agent says that she has received multiple phone calls from the other tenants in which they complain of the issue.

The Landlord's agent says two warning letters were issued on January 24, 2022 and February 28, 2022 with respect to the issue. Copies of the letters were put into evidence by the Landlord.

The Landlord's agent says that inspections have been conducted of all the rental units on the floor and advised that the smell of cannabis was clearly coming from the Tenants' rental unit.

The Landlord also provided a handwritten note from one of its employees. It is unsigned and undated. The note indicates that the employee entered the rental unit on several occasions and described the smell of cannabis. It further describes how the individual is said to have observed what appeared to be a "grow tent".

The Tenants deny growing, smoking, or storing cannabis within their rental unit. The Tenant J.M. advised that he has a medical licence for the production of cannabis, though confirmed that this is grown by a third-party at another location. The Tenants say that they disclosed that the J.M. had a medical licence with the previous building manager and that no issues were raised. The Landlord's agent denies they had notice of the medical licence.

The Tenants say that the note from the Landlord's employee details an incident in which the employee illegally entered their rental unit, which I am told was acknowledged by the Landlord and it compensated the Tenants for the unauthorized entry. The Tenants argue that any observations made by the Landlord's employee on that occasion should not be relied upon as they did not have permission to enter the rental unit. The Landlord's agent emphasized that the entry was for emergency purposes due to water ingress.

The Tenants also argue that the Landlord has provided hearsay evidence to support its allegations, including a note that is undated and unsigned from a purported tenant. The Tenants emphasized that there have been several inspections and that at no point during those inspections was issue raised with respect to cannabis.

The Landlord's evidence includes a one-month notice to end tenancy signed on March 21, 2022. The Landlord's agent confirmed this notice was not served on the Tenants and that only the One-Month Notice was served as described above.

Analysis

The Tenants look to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

At the hearing, the Landlord's agent argued that there was a breach of the tenancy agreement. However, the One-Month Notice does not list this as one of the reasons for ending the tenancy, though there is some mention of this details of cause section. The Landlord did not seek to amend the One-Month Notice under s. 68 of the *Act*. Section 52 of the *Act* requires a notice to end tenancy to state the grounds for ending a tenancy. I find that the One-Month Notice was issued solely on the basis of s. 47(1)(d) and that s. 47(1)(h) does not apply as it was not checked off as a reason within the notice.

Speaking generally of the allegations, the Landlord provides scant evidence to support the position that the Tenants are growing, storing, or consuming cannabis within the rental unit. There is a statement from an individual I am told is the building manager who says she saw a "grow tent" in the rental unit. This individual was not called as a witness by the Landlord. There is no evidence in the form of photographs or otherwise to corroborate the allegations. The Tenants deny consuming, storing, or growing cannabis within their rental unit.

There is evidence that it may smell of cannabis on their floor and that it comes from the Tenants' rental unit. It may be that the Tenants smell of cannabis due to consumption with the smell lingering in their clothing, which could at least be probable due to the fact that J.M. has a medical licence and consumes it, presumably, for a medical condition. I do not know based on the evidence provided. I find that the Landlord has failed to prove that the Tenants are growing, storing, or consuming cannabis within the rental unit.

Further, the Landlord's agent focused her submissions on the alleged breach of the tenancy agreement and provided no submissions on how the Tenants were jeopardizing the health, safety, or lawful right of the other occupants or that they were putting the landlord's property at significant risk. The Landlord bears the burden of proving the One-Month Notice was properly issued, which means providing evidence to support each of the grounds listed and providing some argument on these points. That was not done. The Landlord focused its submissions on a ground for ending a tenancy that was not listed within the One-Month Notice. In the present instance, I find that the Landlord has failed to identify how the Tenants breached ss. 47(1)(d)(ii) (jeopardizing the health, safety, or lawful right) or 47(1)(d)(iii) (put the landlord's property at significant risk) of the *Act*.

Looking at the final ground, being unreasonable disturbance under s. 47(1)(d)(i) of the *Act*, I accept that the smell of cannabis may constitute an unreasonable disturbance to the other occupants. However, there is insufficient evidence to make that finding. The Landlord provides three letters which are said to be from other tenants on the floor complaining of the smell of cannabis emanating from the Tenants' rental unit. All three make allegations that the Tenants are growing cannabis in the rental unit and provide no basis for why they make that allegation. One of the letters alleges that the Tenants are selling it to pay their rent. These are all unfounded allegations.

The Landlord did not call witnesses to speak to the smell, how it was disturbance, or whether the disturbance was unreasonable. There are three letters are provided and an unsigned note from an individual I am told is the building manager. None of them are affirmed. Two are undated and unsigned. That is it. To be clear, the Landlord is seeking to end a tenancy, which has the practical effect of ending the Tenants residency within their home. The Landlord should be prepared to provide evidence that is cogent and compelling on why they issued the notice. The Landlord's agent made scant reference to how the smell, if it were present, was an unreasonable disturbance. Again, the submissions focused on material breach of the tenancy agreement, which is not relevant given the One-Month Notice at issue.

I find that the Landlord has failed to provide sufficient evidence to support the position that the smell of cannabis, if it were present, constituted an unreasonable disturbance.

I find that the Landlord has failed to show on a balance of probabilities that the One-Month Notice was properly issued. I grant the Tenants' application and cancel the One-Month Notice. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenants' application and cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenants were successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants' \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenants withhold \$100.00 from rent due to the Landlord on one occasion in full satisfaction of 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: July 22, 2022

Residential Tenancy Branch