Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310067266: CNL, FFT
File #210069526: CNC, FFT

Introduction

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

- An order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy signed on March 14, 2022 (the "Two-Month Notice");
- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on April 9, 2022 (the "One-Month Notice"); and
- Return of the filing fee pursuant to s. 72 for both of their applications.

This matter was adjourned following the first scheduled hearing, which took place on May 17, 2022.

Y.Y. and R.T. appeared as the Tenants. They were represented by counsel, E.K.. M.M. appeared as the Landlord. Submissions were made on her behalf by L.Z., the Landlord's property manager. Z.Z. was called by the Landlord as a witness.

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 parties advise that they served each other with their application materials. The parties further acknowledge receipt of the others application materials. No objections were raised with respect to service by the parties, with the exception of late evidence provided by the Tenants. I will address the late evidence below. With respect to the

other application materials, I find that the parties were sufficiently served in accordance with s. 71(2) of the *Act* based on their mutual acknowledgements without objection.

Preliminary Issue – Additional Evidence from the Tenants

Dealing with the Tenants late evidence, I was advised that the Tenants had provided evidence to the Residential Tenancy Branch with respect to an alleged disruption in water service to the rental unit in June 2022. The Landlord argues that this should not be included due to the hearing being adjourned in May. The Landlord says that no response evidence was provided on the basis of the adjournment.

At the initial hearing, issues of service were not canvassed as the Tenants raised objection to the Landlord's then lawyer acting as translator for the Landlord. The applications were adjourned to permit the Landlord to retain a translator. Though I generally discourage parties from submitting additional evidence after an adjournment has been granted, the interim reasons made no directions prohibiting it. I wish to make it clear that my reasons for doing so were because no submissions were made by the parties on the substantive issues in dispute, namely the enforceability of the Two-Month Notice and One-Month Notice, nor were issues of service canvassed.

The issue here is that the Tenants additional evidence relates to allegations of water service being terminated by the Landlord in June 2022. Rule 3.6 of the Rules of Procedure requires evidence to be relevant to claim and provides that irrelevant evidence may not considered. The additional evidence related to the service disruption, which is, at best, tangentially related to the claims respecting the enforceability of the two notices to end tenancy. I am not being asked to make a finding whether service was disrupted nor am I being asked to make findings with respect to the Tenants allegation. As I am not being asked to make findings with respect to the alleged service disruption by the Landlord, I find that the evidence is not relevant to the dispute.

As the additional evidence is not relevant to the issues of the enforceability of the two notices to end tenancy, I will not consider it. However, the parties made submissions with respect to the issue at the hearing, which I have summarized below and will be considered to the extent that it is necessary to make a finding on the claims that are before me.

Issues to be Decided

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

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 April 14, 2021.
- Rent of $2,100.00 is due on the first day of each month.
- The Landlord holds a security deposit of $1,050.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the parties. The subject rental unit is a basement suite and the Landlord resides in the main portion with her family.

The Landlord's agent advised that the Two-Month Notice was posted to the Tenants' door on March 14, 2022. The Tenants acknowledge its receipt on March 14, 2022. A copy of the Two-Month Notice was put into evidence, which indicates that it was issued on the basis that the Landlord or the Landlord's spouse would occupy the rental unit.

The Landlord's agent advises that the Landlord's husband would be moving into the rental unit. The Landlord's husband was called as a witness. The husband testified that he is a lawyer and arbitrator in China and resides there for work but returns to Canada to be with his family. He indicates that his work has shifted toward use of teleconference technology due to the pandemic and that his employer has changed its rules to permit this. He says that there are soundproofing issues between the floors and that he needs a quiet place in which to work. Due to the time zone difference between Canada and China, the husband says that he works from 4:00 PM to 4:00 AM and that he sleeps on the floor in a portion of the house. The husband emphasized that the intention is to use the rental unit as a workspace.

The Landlord provides the husband's flight itinerary, which shows that he arrived in Canada on June 5, 2022. When asked at the hearing, the husband testified that he intends to return to China in either August or September 2022. He further testified that he would return to Canada over Christmas when their child is out of school and on vacation.

The Tenants argue that the Two-Month Notice was not issued in a vacuum and indicates that there has been a dispute between the parties since December 2021 due to issues with hot water to the rental unit. The Tenants says that there were 18 instances in which hot water to the rental unit was disrupted over a three-month period and that a request was made in March 2022 to address the issue. I was directed to a letter dated March 13, 2022 which the Tenants say they provided to the Landlord with respect to the ongoing hot water issues. The Tenants argue that the Two-Month Notice was provided in response to the demand to repair the hot water system.

The Landlord's agent acknowledged the hot water was an issue and indicates that there is a problem with insufficient service that would require floors to opened. He says that the hot water tank needs reset when there is a disruption, which requires the Landlord to at home to reset the tank. It was emphasized that the Two-Month Notice was issued due to the husband requiring the space.

The Landlord's agent acknowledges that there is a significant degree of quarrelling between the Landlord and the Tenants. I was referred to a doctor's letter dated April 11, 2022 in which the Landlord was diagnosed with a major depressive episode and has severe anxiety. The Landlord's husband also provided testimony speaking to the level of conflict, where he emphasized that present living arrangements do not appear to be working for either party. The Landlord's husband further spoke to Landlord's mental health. The Landlord's agent argued that the diagnosis was a direct result of the conflict between the Landlord and the Tenants.

The Landlord's agent advised that the One-Month Notice was served on the Tenants by posting it to their door on April 9, 2022, which the Tenants acknowledge receiving on the same date. A copy of the One-Month Notice was put into evidence. The One-Month Notice states that it was issued on the basis of Tenant has significantly interfered and unreasonably disturbed another occupant or the landlord; seriously jeopardized their health and safety; and has engaged in illegal activity that is likely to damage the landlord's property, adversely affected the quiet enjoyment, security or safety, or

physical well-being of another occupant or the landlord, and jeopardized the lawful right or interest of another occupant or the landlord.

The Landlord's agent advised that the One-Month Notice was issued due to the quarrels between the parties. The Landlord's agent says that the Tenants knocked on the Landlord's door at approximately midnight on March 12, 2022 and the Tenant began to yell at the Landlord. The Landlord's agent says that the Landlord and her child were fearful of the Tenants after the incident. The Tenant denies that she yelled at the Landlord on March 12, 2022 and says that she knocked on the door due to the hot water issue. The Tenant says that the Landlord threatened to evict her at that time.

There is also complaint raised by the Landlord with respect to video cameras installed at the property by the Tenants. The Landlord says that the one camera was affixed in such a manner that it observed the main portion of the house. This camera was taken down by the Landlord, which prompted the Tenant to call the police on or about March 31, 2022. The camera was returned to the Tenants. The camera was later installed by the Tenants in their car parked across the street from the property.

According to the Tenants, the camera was installed after their parcel was stolen. They say that the camera was never directed toward the main portion of the house and that it looked at the mailbox area. The Tenants further say that the camera was installed in their car across the street at the suggestion of the police. They deny the camera is an invasion of the Landlord's privacy and say they had the Landlord's permission to install the camera. The Landlord's agent denies any such permission was granted.

Further mention was made toward fighting between the Tenants, which is said to be disruptive to the Landlord. The Tenants deny this and indicate that there was one incident where they were fighting and apologized to the Landlord afterwards.

The Tenants directed me to a recording of a phone call between themselves and the Landlord's agent, which they say took place on April 7, 2022. During the conversation, the parties can be heard discussing issues respecting the tenancy. The Landlord's agent says that there are two reasons the Landlord is seeking to end the tenancy: the first being that the Landlord's husband would be returning at the beginning of June 2022 and the second being that the Landlord is not feeling well and feels that dealing with the tenancy is too much for her. The Landlord's agent raised no objections to the recording and did not deny its accuracy.

The Tenants further mention that the Landlord cut off water to the rental unit in early June 2022 and that an emergency application was filed with the Residential Tenancy Branch. The Tenants say that service was restored after the Compliance and Enforcement Unit became involved with the matter and that service was restored. The Landlord's agent acknowledges there was a service disruption from June 11 to 16 and says that it was due to a water leak and that the Tenants were notified of the disruption. The Tenants deny receiving notice from the Landlord of the water service being shut off.

Analysis

The Tenants seek to cancel the Two-Month Notice and One-Month Notice.

Based on the undisputed evidence of the parties, I find that the Two-Month Notice and One-Month Notice were served on the Tenants in compliance with s. 88 of the *Act* by posting it to their door on March 14, 2022 and April 9, 2022 respectively. The Tenants acknowledge the receipt of the Two-Month Notice on March 14, 2022 and the One-Month Notice on April 9, 2022.

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Upon receipt of a two-month notice, a tenant has 15-days to file to dispute the notice as per s. 49(9)(a) of the *Act*. When a tenant files to dispute a notice to end tenancy issued under s. 49, the landlord bears the burden of proving they are acting in good faith.

Section 51 of the *Act* establishes a compensation regime with respect to notices to end tenancy issued under s. 49. Section 51(2) of the *Act* requires that occupancy be for at least 6 months, otherwise tenants would have claim to compensation equivalent to 12 times the rent payable under the tenancy agreement. By implication, s. 51(2) of the *Act* sets a secondary requirement to notices issued under s. 49 that the occupancy be for at least 6 months. This is supported by Policy Guideline #2A where it outlines there is a 6-month occupancy requirement when the rental unit is to be occupied.

Presently, the Two-Month Notice has an effective date of May 31, 2022. It is not disputed that the Landlord's husband returned to Canada in early June 2022. The Landlord's husband admits that he intends to leave Canada in either August or September 2022 and will not be returning until December 2022 to coincide with their child's Christmas holidays. As the entire purpose of the Two-Month Notice is for the

Landlord's husband to occupy the rental unit for work purposes, I find that the Landlord has failed to establish that he intends to do occupy the rental unit for at least 6 months. Indeed, it was admitted that this point was admitted by the Landlord's husband at the hearing.

As the Landlord's have failed to demonstrate occupation of the rental unit for at least 6 months, I find that the Two-Month Notice was not properly issued. The Two-Month Notice is hereby cancelled and is of no force or effect.

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. Presently, the One-Month Notice was issued on the basis of ss. 47(1)(d) and 47(1)(e).

Policy Guideline #32 provides the following guidance with respect to illegal activities:

> The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.
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> The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.
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> In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.
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> For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's

> property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy.
>
> On the other hand, a chemical drug manufacturing operation (e.g methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.
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> A breach of a provision of the Legislation may or may not constitute an illegal activity depending on the severity of the breach in respect of the criteria set out above. For example, not paying one's rent contravenes the Legislation. However, merely not paying rent in and of itself does not constitute an illegal activity. On the other hand, if the tenant went around the residential property harassing the landlord so that he or she could not collect the rent from other tenants, this might constitute illegal harassment and thus be an illegal activity which would warrant terminating the tenancy.
>
> Breaches of criminal statutes, if minor or technical, may not rise to the level of illegal activity under the Legislation. However, more serious breaches of the same statute may rise to that level. For example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. On the other hand, running a brothel in the rental unit would be an illegal activity warranting termination of the tenancy.

The Landlord made no direct submissions with respect to the alleged illegal activity undertaken by the Tenants. I infer from the Landlord’s agent that the alleged activity related to the security camera. However, no reference was made to specific breaches of any statute or bylaw by the Tenants. Indeed, it appears that the police attended respecting the security camera sometime around March 31, 2022. One would infer that if there were a serious breach of the law by the Tenants, some charge or warning would have been issued. No such information was provided to me by the Landlord.

Looking at the issue broadly as an alleged invasion of privacy, I note that the *Privacy Act* does protect an individual’s right to privacy. However, it is not clear to me that the Landlord’s privacy interest was breached. The Tenants indicate that the camera did not look into the Landlord’s house, which is supported by screen shots from the camera put into evidence by the Tenants. The images provided look out at the street and mailbox.

Further, the guidance under Policy Guideline #32 requires the alleged illegal activities to be sufficiently serious to warrant ending the tenancy. Policy Guideline #32 lists the illegal production of narcotics or running a brothel out of the rental unit. Merely installing a camera looking out to the street or mailbox, even if it could be characterized as a breach of the Landlord's privacy interest, is not sufficiently serious to justify ending the tenancy.

It is good practice for parties to discuss the issue and agree to the cameras beforehand, simply as a matter of neighbourly conduct. Too often these types of disputes find themselves before the Residential Tenancy Branch, which can largely be avoided when landlords and tenants speak with one another and act respectfully. However, in the present instance I find that the Landlord has failed to show that the Tenants cameras rise to the level of illegal activity or, if it were illegal, was sufficiently serious to justify ending the tenancy. I find that the One-Month Notice is unenforceable under s. 47(1)(e) of the *Act*.

Dealing with the final grounds, under the One-Month Notice, I find that the Landlord has failed to show that the One-Month Notice was properly issued under s. 47(1)(d). As stated by the Landlord's agent, the One-Month Notice was issued largely due to the quarrelling that is taking place between the Landlord and the Tenants. Based on the parties' submissions and conduct to date, I would characterize the present landlord-tenant relationship as dysfunctional. However, mere quarrelling with a tenant is insufficient justification to end a tenancy.

The One-Month Notice lists an incident that took place on March 12, 2022 in which the Tenant knocked on the Landlord's door at midnight and began to yell at the Landlord. The Tenant says that she did not yell and knocked on the door due to the hot water issue. The Tenant did not deny knocking on the door at around midnight.

There is no dispute that the hot water system is at issue. The Landlord's agent says that the hot water tank needs to be reset by the Landlord. If the only means of addressing the service issue is resetting the tank, the Tenants are left with little other recourse than contacting the Landlord. It is reasonable, in my view, for the Tenants to expect hot water when they require it. It is unreasonable, however, for the Tenants to knock on the Landlord's door at midnight demanding the system be reset immediately. A simple request could be made via email or text message rather than escalating the matter by knocking on the Landlord's door at an unreasonable time of night.

Having said that, an isolated disturbance on one occasion, particularly in light of the ongoing issues with the hot water system, does not rise to the level of an unreasonable disturbance justifying the end of the tenancy. The Tenants say that there were 18 hot water service disruptions between December 2021 and March 2022. This is not denied by the Landlord. It is not unreasonable to contact the Landlord or the Landlord's representative to notify them that they do not have hot water.

The Landlord says that her mental health has been declining as a result of the conflict she has with the Tenants. I have no reason to doubt that. I would certainly encourage the Tenants to act in a manner that respects the fact that they share a home with the Landlord. Conversely, the Landlord should also be reminded that she has an agreement with the Tenants such that they can reside within the rental unit. The rental unit is their home until the tenancy is ended in accordance with the *Act*. They have a right to ask that the hot water be restored.

There is further mention of arguments between the Tenants themselves. However, there is scant evidence provided by the Landlord with respect to these alleged incidents. The Tenants indicate and I accept that there was one incident in which this occurred. They apologized to the Landlord afterwards. This does not rise to the level of an unreasonable disturbance.

I place significant weight on the phone call the Tenants had with the Landlord's agent on April 7, 2022 in which he tells the Tenants that the Landlord no longer wishes to deal with the tenancy as it is too much for her. Unfortunately, that is not a reason to end a tenancy under the under the *Act*. Only two days later, the Landlord issued the One-Month Notice. In all likelihood, the One-Month Notice was issued so that the Landlord could avoid their obligation under the *Act* to address the ongoing hot water issue.

I find that the Landlord has failed to establish that the One-Month Notice was properly issued. I grant the Tenant's application and cancel the One-Month Notice, which is of no force or effect.

Both the One-Month Notice and Two-Month Notice are of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenants' applications and cancel the Two-Month Notice and One-Month Notice. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenants were successful in both of their applications, I find that they are entitled to the return of their filing fees. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the $100.00 filing fee for both of the Tenants' applications. I direct pursuant to s. 72(2) of the *Act* that the Tenants withhold $200.00 from their rent on **one occasion** in full satisfaction of their filing fees.

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 20, 2022

Residential Tenancy Branch