Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FFT, OPC

Introduction

This hearing dealt with cross applications filed by the parties. On April 3, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 12, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act*.

Tenant A.J. attended the hearing. The Landlord attended the hearing as well, with K.L. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by registered mail on April 12, 2022, and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

The Tenant then advised that he served his evidence by registered mail on July 7, 2022, and the Landlord confirmed that he received this evidence as well. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering a Decision.

The Landlord advised that he served a separate Notice of Hearing package and some evidence, to each Tenant, by registered mail on April 22, 2022, and the Tenant confirmed that he received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were duly served with the Notice of Hearing packages and some evidence.

The Landlord then advised that he served additional evidence by registered mail on June 12, 2022, and the Tenant confirmed that he received this evidence. As service of the Landlord's evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering a Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the most current tenancy agreement started on April 1, 2021, that rent was due in the amount of $1,800.00, and that it was due on the first of each month. A security deposit of $700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration. As a note, the Landlord was cautioned that his use of the vacate clause in the tenancy agreement was not permitted, nor would it be enforceable.

The Landlord advised that the Notice was served by registered mail on March 23, 2022, and the Tenants clearly received this as they disputed it within the legislated timeframe. The reasons the Landlord served the Notice are because the “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 [and/or] put the landlord’s property at significant risk.” The effective end date of the tenancy was noted on the Notice as April 30, 2022.

The parties were provided with substantial time to make their submissions with respect to the reasons on the Notice, and the hearing exceeded the allotted timeframe scheduled for the parties.

The Landlord testified that there was a major flood in the rental unit on December 20, 2021, due to the dishwasher, that also leaked into the unit below. He stated that he hired a plumber on December 27, 2021 to address the water leak, that he filed an insurance claim on December 29, 2021, where a repair and restoration was authorized, and that he ordered a new dishwasher and replaced the old one. He submitted that the

rental unit was dried on January 18, 2022, but the damaged laminate floors needed to be replaced.

He stated that the Tenant refused to allow the restoration company to deliver materials to the rental unit to begin the repairs, and that the Tenant was sent a warning email on March 10, 2022, to coordinate with the restoration company, by March 15, 2022, and schedule the necessary repairs. However, the Tenant did not comply with this request and will not allow the Landlord to complete the repairs. He referenced his documentary evidence submitted to support this position.

When he was asked what the nature of the flood was, he initially stated that he "had no idea" what caused it and that he thought that it was due to the age of the dishwasher. He eventually confirmed that the flood was not as a result of the Tenants' negligence.

In addition, the Landlord advised that the Tenants were required to purchase their own insurance as per the tenancy agreement. However, in the March 10, 2022 warning email, the Tenants were asked to send a copy of their insurance by March 15, 2022. As the Tenants refused to do so, this is further justification for service of the Notice.

The Tenant confirmed that the source of the flood was due to a problem with the dishwasher. He advised that he worked with the Landlord to allow equipment in, within 24 hours, to dry the rental unit and remove the moisture due to the flood. In response to the Landlord's March 10, 2022 email, he asked the Landlord several logistical questions about how long the repair would take and what sort of concessions the Landlord would make with respect to accommodating any needs in the rental unit during the repair period. However, he did not receive any response from the Landlord.

He testified that the Landlord never complied with the *Act* by serving any notice to enter the rental unit. He stated that he spoke with the project manager, who was in charge of the repairs, and it was this person's impression that he could enter the rental unit at any time. As well, the Tenant stated that this person did not indicate that the repair was in any way time sensitive. He referenced his documentary evidence submitted to support his position.

As well, he confirmed that the Landlord requested to see his insurance documents, but it was his position that he was not required to show this to the Landlord. When pressed about why he did not simply show this to the Landlord despite receiving this request, it

became clear that the reason the Tenant did not comply with the Landlord's request was likely due to an effort to spite the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 29 of the *Act* states the requirements should the Landlord need to enter the rental unit. This Section reads as follows:

> *(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).*

Section 32 of the *Act* outlines the Landlord's and Tenants' obligations to repair and maintain, and states the following:

> *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
>
> *(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
>
> *(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
>
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*
>
> *(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

As well, Section 44 of the *Residential Tenancy Regulations* (the "*Regulations*") states that "A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed."

With respect to the Notice served to the Tenant on March 23, 2022, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

With respect to the validity of the reasons indicated on the Notice, I note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. Moreover, 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. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would

behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and testimony before me, all parties agreed that the source of the flood originated from the dishwasher. While the Landlord appeared to intentionally avoid confirming during the hearing whether there was a problem with the dishwasher or whether the flood was as a result of the Tenants' negligence, I note that he stated in his written submissions that "Finally, I was able to get a licensed plumber to Inspect [sic] the Unit [sic] and Stop [sic] the source of the water leak and replaced the old dishwasher with a NEW [sic] dishwasher." Given that the Landlord purchased and replaced the old dishwasher with a new model, and also filed an insurance claim for the damage, I can reasonably conclude that there was a problem with the old dishwasher that likely resulted from either age or a lack of maintenance. It is not clear to me why the Landlord would avoid answering this question during the hearing, and this causes me to question the reliability of his submissions.

As I am satisfied that the source of the flood was due to the age and/or lack of maintenance of the dishwasher, I find that the Landlord is responsible for maintenance and repair of this issue. While he claims in his written submissions to being the "victim of this incident", I fully reject this spurious and exaggerated suggestion. As there is no evidence that the Tenants used the dishwasher in a manner that would have caused the flood, and given that the Landlord purchased a new dishwasher and filed an insurance claim for the damage, it is evident that this flood issue fell under the Landlord's purview to rectify.

Given that the Landlord was responsible for this damage and repair, he would be potentially accountable for accommodating the Tenants for any loss while this repair is undergoing. It does not make any logical sense that the Landlord would expect the Tenants to file a claim through their insurance company for a problem that they were not negligent for. As well, insurance purchased by tenants generally only covers damage to contents and property.

As such, if the Landlord wanted to affect the necessary repairs, the Landlord would be required to give the proper written notice to enter the rental unit, under Section 29 of the *Act*, to commence those repairs. Once the notice has been given, and the appropriate timeframes for service have been respected, the Landlord can then enter the rental unit to conduct those repairs. However, based on the Landlord's own evidence, his email dated March 8, 2022, does not comply with Section 29 of the *Act* or Section 44 of the *Regulations* with respect to proper timing for entry on March 9, 2022. While the Tenant

responded with an email that same night, clearly this entry was scheduled for less than 24 hours away. Therefore, I find that the Landlord was not permitted to enter the rental unit at the desired time on March 9, 2022, as this notice clearly demonstrates that the Landlord did not schedule his entry with the repair people to comply with the *Act* and *Regulations*. As such, I do not find that there is any evidence that the Tenants prevented the Landlord from entering the rental unit, as this notice of entry was not valid.

Furthermore, when reviewing the Landlord's March 10, 2022 email, the Landlord is placing the onus on the Tenants to schedule the repair with the restoration company. As the Landlord is required to give the proper written notice for entry, I do not find it reasonable for the Landlord to tell the Tenants to schedule the repairs themselves, and then attempt to evict them if it is not done in a timely manner. Again, it is the Landlord's obligation to schedule this, and then give the proper written notice after calculating the appropriate timeframes for service. Once this is done properly, then the Landlord can enter the rental unit to complete what repairs are necessary. Given that the Landlord has failed to take responsibility for issuing the proper written notice for entry, I do not find that the Tenants are culpable in this situation. Once the proper written notice for entry is served and the appropriate timelines have been respected, the Landlord can then enter the rental unit for the reason stated on the Notice. Should the Tenants physically bar entry to the rental unit, then I would accept that the Tenants' actions would likely warrant service of the Notice.

In addition, while I accept that there could be additional consequences of damage that might develop after a flood, I note that the Landlord has not submitted any documentary evidence from any professionals that demonstrate that there would be any significant additional damage should this repair not commence immediately. Given that there is a lack of this evidence, and given that the area was apparently dried out sufficiently after the flood occurred, I am not satisfied that the Landlord has established that the health or safety or lawful right of the Landlord has been jeopardized, or that the property has been placed at significant risk.

Generally speaking, when there is a repair such as this which was due to the Landlord's negligence, the Landlord would largely be responsible for making the appropriate repairs and as well, possibly be responsible for compensating the Tenants for having to live through a repair issue that was not their fault. On the other hand, when a repair is required and the Landlord has given the proper written notice to affect those repairs, the Tenants should attempt to work with the Landlord to accommodate the required repairs.

It is incumbent on both parties to work with each other, like mature adults, in an effort to have repairs completed as effortlessly and efficiently as possible.

When reviewing the Tenant's emails, I acknowledge that the Landlord should attempt to accommodate as best as possible to reduce the impact on the Tenants when completing repairs. However, it is evident in my view that the Tenant is verging on being unreasonable when attempting to work with the Landlord to have these repairs completed. I also note that the Tenant has concerns with his ability to work from home during any necessary repairs. I note this because the *Act* deals with issues related to residential use of the rental unit, and if the Tenant has been afforded the opportunity to work from home, it does not mean that the Landlord has to accommodate this benefit. Should the Landlord provide the proper written notice for entry, the Tenant should take the appropriate steps to find an alternative space to work from, if necessary.

With respect to the issue of the insurance, the consistent and undisputed evidence is that the Tenants were required to purchase their own insurance. Moreover, the Landlord clearly requested in the March 10, 2022 email that the Tenants provide him with a copy of their insurance, and the Tenant refused to do so. It was not clear to me why the Tenant chose not to comply with this simple request, and based on the tone and demeanour of the Tenant's evidence, it was clear that this was likely not provided to the Landlord out of spite. While I do not find that the refusal to show this insurance to the Landlord would constitute a serious jeopardization of the health or safety or lawful right of the Landlord, nor does it put the Landlord's property at significant risk, I do find that this is consistent with the overall tenor of the Tenant. As well, I find that this further demonstrates, in my view, a pattern of behaviour that could potentially contribute to the formation of grounds to end the tenancy.

All of this to say that I find that both parties are at fault here. It is clear that the problems in this situation were initiated by the Landlord's failure to comply with the *Act*. Then, the negativity of the situation was exacerbated by the inability of the parties to work together in a mature, respectful manner in order to execute a fairly routine repair. I find that this situation devolved mostly as a result of an inability to communicate effectively, due to personal differences, and due to hurt feelings. I find that the parties' portrayals of animosity or acrimonious incidents were, more likely than not, more of an exaggeration of the description of events as experienced by both sides, rather than an accurate account of what actually transpired. The parties are encouraged to work together in a mature manner, and communicate as adults, in an effort to have the appropriate repairs completed in accordance with the *Act*, as opposed to wasting all parties' time by

continuing to handle this situation in the manner that they have chosen to so far.

When reviewing the totality of the evidence before me, I am not satisfied that the Landlord has sufficiently substantiated either of the grounds chosen on the Notice for ending the tenancy. Therefore, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As I find that both parties were culpable for the deterioration of this tenancy, I find that the Tenants are entitled to recover only $50.00 of the $100.00 filing fee paid for this Application. The Tenants are permitted to withhold this amount from a future month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of March 23, 2022 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 28, 2022

Residential Tenancy Branch