Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, OLC, AS, MNDCT, FFT, CNC

Introduction

The Tenant filed an Application for Dispute Resolution on April 15, 2022 seeking:

- Access to the rental unit for the Tenant and/or their guests
- The Landlord's compliance with the legislation and/or the tenancy agreement
- Allowance to assign or sublet, with the Landlord's permission unreasonably withheld
- Compensation for monetary loss or other money owed
- Reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 14, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant stated they delivered notice of this dispute in registered mail to the Landlord. This spanned three separate packages, with the most recent prior to the hearing being on June 1. The Landlord confirmed they received these materials.

The Tenant confirmed they received the Landlord's prepared evidence prior to the hearing.

On the basis of both parties confirming that they received the prepared evidence of the hearing, I proceeded with the hearing as scheduled.

Preliminary Matter – Amended issue of the Notice to End Tenancy

The Landlord issued a Notice to End Tenancy for Cause (the "One-Month Notice") to the Tenant on June 6, 2022. The Landlord provided this in their evidence to the Residential Tenancy Branch for this matter on June 9, 2022.

I proceeded with the hearing and allowed the Tenant the full opportunity to make submissions on all issues they applied on, and the Landlord had the chance to respond.

The Landlord initially stated their objection to the inclusion of the One-Month Notice as an issue in this hearing; however, the Tenant noted it was the Landlord who provided a copy of the document in their evidence. After stating their reason for this as the immediate concerning safety issue to the rental unit property – which formed the basis for their service of this notice via their property manager – the Landlord stated that they wished to have this issue included in this hearing.

As provided for in the *Residential Tenancy Branch Rules of Procedure*, an Applicant in the dispute resolution proceeding may amend a claim. Rule 4.2 provides that this may happen in the hearing. I confirmed with the Tenant that they wished to amend their Application to challenge the One-Month Notice. I find consideration of this amendment would not prejudice the Landlord, primarily because the Landlord disclosed the One-Month Notice in their evidence for this hearing. In the hearing I heard submissions from both parties on the validity of the One-Month Notice.

The *Residential Tenancy Branch Rules of Procedure* also permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

I find the matter of urgency here is the possible end of this tenancy, and for this reason, I sever the other pieces of the Tenant's Application from my consideration; however, I grant the Tenant leave to reapply. I do not consider the issues of the Tenant's allowed access to the rental unit, the Landlord's compliance with the legislation and/or the agreement, nor the Tenant's monetary claim – they are unrelated to their Application on the urgent issue of cancellation of the One-Month Notice.

Preliminary Matter – current tenancy address

The Tenant applied to resolve issues concerning their current tenancy. In line with the issues that they identified on their Application, the fact that they have a tenancy agreement in place at a second rental unit with this Landlord is a large part of all submissions and evidence throughout.

The *Act* s. 1 defines "tenancy" as "a tenant's right to possession of a rental unit under a tenancy agreement". I find this refers to a single rental unit.

To be clear, my consideration of the issues listed below is confined to the rental unit I shall identify as the "MR rental unit" based on its location in the municipality identified as "MR". I omit where possible the status of the tenancy agreement that exists between the parties for the second separate rental unit I shall identify as "S rental unit" and I make no findings on the validity of the agreement, or any conditions in place for that separate rental unit. The Issues listed below are limited only to the MR rental unit as that appears on the Tenant's Application.

Preliminary Matter – Landlord request for compensation and possession

In their evidence, the Landlord included pieces of their own request for compensation. This focuses on the sale of the rental unit property. They added amounts for aggravated damages and fees to their agents.

I make no consideration of this monetary piece from the Landlord, with no Application for Dispute Resolution in place joined to this file. I am limited to the Tenant's Application.

The Landlord also requested that the Tenant move out from the rental unit "within 30 days starting [from] the date when the [Arbitrator] made a decision." Again, this would normally entail a separate Application from the Landlord for an Order of Possession in line with a notice to end tenancy. Given my consideration of the One-Month Notice below, an Order of Possession to the Landlord is a component of any finding I make on that issue listed below.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession for the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the rental agreement they had with the Landlord. This is for the rental unit in which they resided at the time of the hearing (the "MR rental unit"). This agreement started on November 1, 2016, for an initial fixed term of one year ending on October 31, 2017 and continuing on a month-to-month basis after that. The rent amount of $2,790 increased by mutual agreement over the years to $2,980.

The Tenant added in their written timeline that the agreement from September 2020 onwards included a clause stating, "no subletting" and this represented a: change to our material terms" so they did not sign that agreement.

The Landlord started the process of selling the MR rental unit. The Tenant was slated to move into another rental unit owned by the same Landlord on June 1 (the "S rental unit"). The Landlord offered this rental unit as being available for rental if they sold the MR rental unit. The Landlord clarified at the outset of the hearing that "the Tenant can move into [the S rental unit]" however that S rental unit was not available at the time of the hearing.

The Tenant's submissions

The Tenant made the following submissions, and the list below reflects both statements given in their testimony in the hearing as well as in their written timeline summary:

- On February 8, 2022 the Landlord sent a letter to the Tenant stating they purchased a new home and selling the MR rental unit. The Landlord included a "Notice of Termination Rent" with this message, stating it was "more than 2 months notice", with the final date being May 30, 2022 and the final month of May 2022 as rent-free.

- On the following day, the Landlord offered the S rental unit to the Tenant for rental. The Tenant responded positively to this offer, and preferred to sign an agreement, and did so on February 13, including a security deposit. This separate tenancy agreement states that no subletting was allowed; however, this did allow for subletting of the basement if the rent increases by $500. The Tenant signed this agreement, and its addendum, on February 13, 2022.

- On March 17 the Landlord notified the Tenant they were not pleased with the condition of the MR rental unit after visiting there in line with the pending sale of that property. In an email on that date, the Landlord informed the Tenant they planned to also sell the S rental unit within one year, and proposed a return of that security deposit as well as $1,000 cash for the tenancy to end.

  The Landlord set out requirements to the Tenant 'if you still want to move in to the [S rental unit]" – these include "no work shop and related materials move to the [S rental unit and shed]", "no fixed furniture" and "no subleases". The Landlord then attached a revised addendum for the current iteration of the tenancy agreement for the S rental unit.

- In the hearing the Tenant described then doing a lot of work to the MR rental unit because the Landlord was not pleased with the look of the MR rental unit. The Landlord forwarded images of the current state of the rental unit to the Tenant, showing the state of the backyard with installed playground equipment, the inside of the kitchen and living area showing "installed fixed furniture and parts" and an installed hook for a boat. The Landlord stated: "The workshop and related materials stored in the garage are totally not acceptable for us."

The Landlord's March 21 message to the Tenant set out their concern about the state of the rental unit – because of the Tenant's changes – impacting their asking price for the sale of that MR rental unit. Their various concerns with photos were set out in the message, and the Landlord set out their desire to end the tenancy for this chief reason, along with the Tenant not signing the newly presented revised addendum. In this message the Landlord also stated, "If we don't receive your reply within 30 hours, we will give you a 2 month notice for occupy by landlord."

- On March 24 the Landlord restated their plan to the Tenant for selling the S rental unit in 2023. They let the Tenant know that if they still wanted to move in, the Landlord would "exercise out landlord right to come to check the house conditions every month." The Landlord had also presented a mutual agreement to end the tenancy for the S rental unit.

- On March 25 the Landlord clarified that they could give $5,000 in additional compensation to the Tenant for ending the S rental unit tenancy.

- The Landlord messaged to the Tenant on March 25 stating "The buyer would like to come to see the house including the rental unit at 10 am for around 30 minutes on Sunday March 27. Please vacancy the house."

- In a comprehensive email to the Landlord on March 25 to set out their position, the Tenant noted that they have "different views" on normal wear and tear as well as "what is acceptable to be done in a rental". In the hearing the Tenant explained that from their perspective the state of the rental unit at that time was the same as when they moved in.

- In a further email to the Landlord on March 29, the Tenant set out the negative impact the Landlord's demands have had on the Tenant along the way, being blamed for the decrease in market value of the MR rental unit because of "everyday items in our backyard and attached to our walls, all of which can be easily removed/fixed." The Tenant set out their feelings that they were being subject to the Landlord's harassment., being "pressure and coerce us to move out of [the MR rental unit] and [the S rental unit]."

  The Tenant also set out their position on the Landlord seeking to end the tenancy at the MR rental unit. This includes their feeling of being caught "off guard to sign a mutual agreement to end the tenancy" without knowing the intention of the

MR rental unit purchasers. The Tenant also summed up the Landlord's request for the Tenant to vacate the rental unit on the 27th for the purchaser's walkthrough visit of the MR rental unit.

- On March 30, 2022 the Landlord notified the Tenant that they had cancelled the sale for the MR rental unit, and "You don't need to move at the end of May." The Landlord requested a mutual agreement for ending the S rental unit tenancy by March 31.

- On April 4, 2022 the Landlord gave notice to the Tenant that they are not allowed to sublet the MR rental unit, and "your sub-renter [must] move out before May 31, 2022." Also, the Landlord instructed the Tenant to "remove your wood processing [wood] shop and related materials from [the MR rental unit] garage before April 30, 2022."

- Regarding the MR rental unit, the Tenant clarified in a further email message on April 5, 2022 to the Landlord that "We have broken no tenancy agreements storing wood and tools". The Tenant restated their cooperation with the Landlord issuing a Two-Month Notice to End Tenancy in line with the sale of the MR rental unit.

- In response to this on April 6, 2022 the Landlord reiterated their point on no subletting allowed at the MR rental unit, and included "4 course notices":

    - Notice to remove all installed fix furniture and parts on the wall and the Garage door frame" which must be completed by May 31, 2022
    - Notice that the sublease renter must move out from the rental unit by May 31, 2022. (The Tenant in the hearing noted this was not attached to the One-Month Notice.)
    - Notice that the Tenant must "Remove all wood cutting workshop, and related materials from Garage" by May 31, 2022.
    - Notice that the Tenant must "Repair front and back yard garden, removing all installed equipment, repair damaged grass" by May 31, 2022.

The Tenant also provided earlier communication with the Landlord from August 2021 in which they clarified that damage in the backyard was due to the pond that was in place, and "not due to neglect". Leaving the pond unaltered and unrepaired led to flooding and difficulties with the soil. This required ongoing maintenance and attention over the winter months with the accumulation of rain. In the hearing the Tenant noted the

Landlord had not attended for any routine repairs, and a lot of the state of the yard was because of a large tree.

They also provided photos from March and April 2022 showing the state of the rental unit and the backyard. This is "Proof that the home is in good condition after 6.5 years of tenancy." They stated the Landlord had visited to the rental unit "once in this time" and did not respond to the Tenant's concerns about a problematic tree, the pond in place. They stated "There is minimal wear and tear, and hooks or hung items are easy to remove and fill holes."

In sum, in the hearing the Tenant stated they were facing the One-Month Notice from the Landlord for their not fixing the lawn, having shelves on the walls, and needing to remove tools and materials from the garage. The Tenant stated, in response to the Landlord's issues with the state of the property, that there is a "difference of opinion on what is clean and organized and what is not". They stated they feel this is "not in line with the reason to evict us."

The Landlord's submissions

The Landlord issued the One-Month Notice to the Tenant on June 6, 2022. This gave the final move-out date from the MR rental unit for July 31, 2022. On page 2 of the document the Landlord noted the reason as "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Landlord attached three pages sent to the Tenant on April 6, the "4 course notices". Specifically, these are: the notice about fixed furniture and parts on the wall and the garage door frame; the removal of the workshop from the garage; and repair of the front and back yard garden, removal of installed equipment and repair of damaged grass.

In their evidence the Landlord provided a dialogue via email, ongoing since April 25 with the Tenant. This is specific to yard care. On May 24 an agent for the Landlord requested a meeting to review the issues on June 3. Based on their visit the agent reported back to the Landlord on June 3 that "The fixture and trampoline remain in the backyard. The wood tools remain in the garage." The agent attached images from the front of the home as well as the backyard space. The image dated June 3, 2022 in the Landlord's evidence shows the very front of the yard lawn damaged with what appears to be parked car space on the lawn.

In the evidence the Landlord provided their own timeline, with the events linked to the One-Month Notice as follows:

- February 9, 2022: offer to the Tenant to rent the S rental unit “when the [MR rental unit] is sold”

- February 18: the Tenant knows that subletting is not allowed, and did not tell the Landlord

- February 20: the Landlord’s first visit to the MR rental unit – the Tenant is subletting the main separate entry unit, and there is a woodcutting shop in the garage, and “several fixed furniture” installed – the backyard is “totally messy”

- March 3: informed the Tenant that the garage workshop is not allowed, and asked the Tenant to move out from the MR rental unit within 30 days with $1,000 compensation if they go to find other houses (A separate message from the Landlord to the Tenant on March 3, 2022 notes “we cannot accept your workshop business in garage.” A note in the margin states: “fire hazard!”)

  In the hearing the Landlord cited the workshop in the garage as an issue for their insurer who would refuse a claim for this reason. They submitted they identified this insurance issue to the Tenant; however, the Tenant in response stated they had nothing detailed or authoritative from the Landlord in terms of it being an insurance issue, and “it’s not a workshop” it’s simply tools and wood stored in the garage. The Landlord stated their belief that the workshop was for business purposes running in the garage.

- March 17: The Landlord informed the Tenant that the MR rental unit was sold, and they need to move out on May 31 with the rental unit in the original condition. The Landlord noted the MR rental unit lost value because of its condition.

- March 25: the Tenant wanted more compensation, so the Landlord offered $5,000.

- March 27: the realtor viewed the MR rental unit with the purchaser, and forwarded a Mutual Agreement to End Tenancy to the Tenant

- March 28: Landlord asked the Tenant to sign the Mutual Agreement To end Tenancy for the MR rental unit

- March 31: the purchaser signed the “General Release” because the Tenant did not agree to end the tenancy by March 31

- April 4: The Tenant is not ending the tenancy for the MR rental unit; therefore, the Landlord can’t sell it.

- April 6: 4 caution notices forwarded by registered mail to the Tenant (listed above)

Also, in the Landlord’s evidence regarding an end to the MR rental unit tenancy:

- A copy of the “Mutual Agreement to End a Tenancy” dated March 25, 2022, bearing their own signature but not that of the Tenant. This sets the final end-of-tenancy date for the MR rental unit on May 31, 2022, with the final month being rent-free.

- A “Notice of Termination Rent” document, bearing the Landlord’s signature dated February 8, 2022. This is notifying the Tenant that they need to end this tenancy because of their new home purchase and need to sell the MR rental unit for that reason. This is “more than 2 months notice” until the end-of-tenancy date on May 30, 2022. This document also has the instructions to the Tenant to leave the keys on the countertop before May 31.

- A “Two Month Notice to End Tenancy For Landlord’s Use of Property”, unsigned, dated February 8, 2022. This provides the final end-of-tenancy date for May 30, 2022. On page 2 the Landlord indicated that the purchaser asked the Landlord to give this notice because they intend to occupy the rental unit. There is no purchaser information provided on the second page. (In the hearing the Tenant noted this document was not provided to them and only appeared in the Landlord’s evidence.)

- Their email from the Landlord to their realtor dated April 6 attached the before-after images for the backyard space, the front of the home showing front lawn damage, the inside of the home showing installed shelving and other “fixed furniture”, as well as the workshop they observed in the garage, stating “The workshop and related materials in the garage are totally not acceptable for us.”

In the hearing the Landlord stated they could not understand why the Tenant would not sign the Mutual Agreement to End the Tenancy for the MR rental unit, when they had

the plan to move out from that rental unit. If they would not sign the agreement to end the tenancy at the MR rental unit, then why would they still want to move to the S rental unit. The Landlord maintained they could not sell the MR rental unit because the Tenant chose not to move out from there, and this was the Tenant's own decision to remain. The Landlord also outlined the costs to them for legal fees, and preparing the marketing of the MR rental unit for sale. They reiterated that the Tenant was attempting to rent two rental units from the Landlord, and "this is impossible". The Landlord also cited the Tenant's subletting the rental unit as being problematic, with it not being the Tenant's property.

Analysis

In the One-Month Notice issued by the Landlord on June 6, 2022 they gave the reason that the Tenant had breached a material term of the tenancy agreement.

The *Act* s. 47(1)(h) provides that a landlord may end a tenancy by giving a One-Month Notice of a tenant has failed to comply with a material term of the tenancy agreement, and not corrected the situation within a reasonable amount of time.

In the matter before me, the Landlord has the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find that, given the manner in which the Landlord gave notice of necessary corrections to the Tenant, the specifics given were not material terms to the tenancy agreement. My reasons for this finding are as follows:

- None of the "4 course notices" included a statement that a failure to correct the situation could result in and end-of-tenancy notice for this reason, despite specifying a timeline for completion.

- These notices did not specify that the Tenant was not complying with a material term of the tenancy agreement, and in each case a material term was not provided in these notices. If they were meant to refer to a broader clause within the tenancy agreement, this was not stated.

- No term as it exists in the tenancy agreement refers to any of these identified problems as being the extra responsibility of the Tenant, or specific actions or

repairs or modifications that are restricted or otherwise not allowed. There is no evidence of past communication at an earlier time in the tenancy from the Landlord to the Tenant on these particular issues.

- The Addendum more broadly mentions maintenance of the back yard including cutting grass, cleaning snow and pond maintenance. However, this was not specifically noted in any of the notices the Landlord provided to the Tenant in April.

- Similarly, there is nothing specific to the storage of tools or materials in the garage, or use of the garage as a workshop. The parties disagreed on the state of the garage; however, the actual state is immaterial in that there was nothing in the agreement restricting the purposes for which it was used by the Tenant over the course of the tenancy.

More tangential to this finding, yet still relevant is the Tenant's statement that the Landlord had not inspected or visited the property over the entire course of the tenancy that started in 2016. I find it strange that the Landlord would only enter into the property – seemingly with a relationship of trust with the Tenant thus far – and demand changes to really cosmetic deficiencies in the rental unit and yard when they intended to sell it. I find it an unnecessary burden on the Tenant to force repairs within a relatively narrow timeframe when these were never identified as being problematic areas in the past. I accept the Tenant's point on this based on their submission of communication they had with the Landlord in 2021 about the problems posed by the pond in the yard space and the ongoing maintenance and difficulties it presented, and the issue with the large tree that needed maintenance as well.

Further, I also consider the intentions of the Landlord with respect to their true need to have the Tenant out of the rental unit. This was the purpose of selling the rental unit, also within a relatively short timeframe. The Landlord was not able to affect the correct Notice to End Tenancy for the Landlord's Use (*i.e.*, a Two-Month Notice) based on a pending purchase. Nor did they manage to have the Tenant sign a Mutual Agreement to End the Tenancy. I cannot conclude that the Landlord was ill-advised on how to end the tenancy correctly in these circumstances; however, this leaves the One-Month Notice as appearing to me to be somewhat contrived, meaning it appears from the abundance of evidence in total that the Landlord was looking for some way to end this tenancy and made this attempt using the One-Month Notice.

There are legal means available to end a tenancy when the situation involves the sale of the rental unit. The evidence does not show that the Landlord made attempts at serving those notices and failed, or was otherwise blocked by the Tenant challenging those notices through dispute resolution. Given the fulsome submissions and evidence presented by the Tenant here, I accept their point that the copy of the Two Month Notice to End Tenancy for Landlord's Use that appeared in the Landlord's evidence – albeit unsigned – was not known to them prior to its disclosure in the Landlord's evidence. In sum, I find the *lack* of the proper notice to end tenancy in this situation to be telling, and that does detract from the validity of the One-Month Notice the Landlord opted to serve here.

I find this is a situation where the Landlord closely inspected the state of the rental unit in line with a possible sale. When other matters did not work out for the Landlord, the deficiencies they noted – really each of them cosmetic and not fundamentally presenting damage to the rental unit – suddenly turned into material terms. As provided in the Residential Tenancy Branch's *Residential Policy Guideline 8* on 'Unconscionable and Material Terms (giving a statement of the policy intent of the legislation), a material term is one which parties agree is so important that "the most trivial breach of that term gives the other party the right to end the agreement." Cosmetic deficiencies or issues of maintenance do not fit into this description.

The lack of firm evidence to show that the Tenant had requisite knowledge that the infractions identified each constituted a breach of a material term detracts from the ability of the Landlord to enforce those terms as material terms by seeking to end the tenancy. I find the infractions, as presented, were not material terms of the tenancy agreement; therefore, I cannot regard them as breaches giving the Landlord the right to end the tenancy.

Conclusion

The Tenant's Application to cancel the One-Month Notice is successful. The tenancy will continue in accordance with the *Act*.

As the Tenant was successful in this Application, I find the Tenant is entitled to recover the $100 filing fee they paid for this Application. I authorize the Tenant to withhold the amount of $100 from one future rent payment.

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

Dated: July 13, 2022

Residential Tenancy Branch