



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Tenant: CNC OLC FFT
Landlord: OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

DS represented the landlord in this hearing, while the tenant appeared with their girlfriend. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenant confirmed receipt of the 1 Month Notice dated March 31, 2022. Accordingly, I find the tenant duly served with the 1 Month Notice dated March 31, 2022.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications"). In accordance with section 89 of the *Act*, I find that both parties duly served with each other's applications. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence.

Preliminary Issue: Wrong Address

The landlord testified that there was a critical error in the tenant's application where the tenant had provided the wrong rental and service address. The landlord requested the dismissal of the tenant's application as the landlord could not serve the tenant by way of registered mail. The landlord subsequently posted a letter on the tenant's door informing them of the critical errors, but did not receive a reply.

I have reviewed the materials as well as the submissions from both parties. I note that the landlord is correct in noting that the tenant failed to note the proper service and rental address on their application, which appears to contain a typographical error.

Although a critical error can have significant consequences, in this case, I find the error is a typographical one, and which did not impact the landlord's ability to serve or respond to the tenant's application. I find that by posting a reply to the tenant, the landlord demonstrated that they knew that the address should have in fact contained a 7 instead of a 4. I find that the errors referenced by the landlord did not have a significant or critical impact on the landlord's ability to understand or respond to the tenant's claims. Accordingly, I do not find the landlord's request for a dismissal of the tenant's application on the grounds of these errors to be justified, and I will allow the tenant's application to proceed.

As both parties acknowledge the typographical error, I amend the tenant's application to reflect the proper rental and service address.

Preliminary Issue: Tenant's Evidence

The landlord testified that the tenant never served them with their evidentiary materials. The tenant testified that they had served the landlord by way of registered mail, but did not provide any proof of service.

Although the tenant claims to have served the landlord, I find that the tenant failed to provide sufficient proof to show that that this was indeed the case. Accordingly, the tenant's written evidence will be excluded for the purpose of this hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the parties entitled to recover their filing fees?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on November 15, 2019, with currently monthly rent set at \$1,035.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$500.00.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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 landlords;
3. The tenant or a person permitted on the property by the tenants has put the landlord's property at significant risk;
4. The Tenant has not done required repairs of damage to the unit/site/property/park

The landlord testified that they had noticed significant damage to the cupboards, which the tenant did not inform the landlord of, or repair.

The landlord is also extremely concerned following an incident which involved the overflowing of the toilet in the tenant's rental unit, and into the unit below. The landlord

only became aware of this when the tenant below had called the landlord to inform them of the water in their unit.

The landlord testified that the tenant not only failed to inform them of the overflow and flood, the tenant did not mitigate the issue by turning off the water, or at least calling the landlord to attend. The landlord feels that the tenant's behaviour put the landlord's property at significant risk. The landlord testified that following the incident, the tenant also failed to provide proof that they had professionally cleaned and sanitized the affected areas.

The tenant denies breaking the cabinets, which the tenant confirms was broken, but due to significant wear and tear. The tenant testified that the cabinets were in bad condition due to their age, and felt that the landlord should be performing the repair. The landlord confirmed in the hearing that the cabinets were the original ones from when the building was built, which was around 1974. The landlord noted that no other rental units had this issue.

The tenant acknowledged that there was a problem which involved the toilet overflowing, but testified that they thought the incident was minor, and therefore did not call the landlord. The tenant testified that the incident took place late at night, and therefore they did not want to bother the landlord. The tenant testified that they had called their partner, and then cleaned up the water with towels. The tenant testified that they did not know that the water had damaged the unit below.

The tenant testified that it was an honest mistake, and they felt terrible. The tenant testified that there was no obvious sign of a flood from their rental unit, and as the toilet was old, the toilet was often running and taking a while to fill. The tenant testified that they had contacted their insurer, who had agreed to cover the overflow, but the landlord refused to deal with the broker.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

I have considered the concerns brought up by the landlord, as well as the testimony of the tenant. The burden is on the landlord to support that the this tenancy should end on the grounds provided on the 1 Month Notice.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of cupboards is 25 years. I find that the cupboards have far exceeded their useful life. In consideration of the disputed testimony and considering the age of the cupboards, I am not satisfied that the damage was caused by tenant.

Section 32(1) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (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.

I order that the landlord repair the cupboards in a manner that complies with section 32 of the *Act*

I have considered the evidence and testimony of both parties about the toilet overflowing incident. Although concerning that the toilet had overflowed, affecting not only the tenant's rental unit, but the unit below, I find that the tenant had provided a credible and reasonable explanation for what had taken place. I find that the incident had taken place late at night, and the tenant did not realize the extent of the overflow. Although I agree with the landlord that the tenant should have turned off the water, and contacted the landlord as soon as possible, the tenant did not appear to know that this would have been the proper course of action, most likely because the tenant had not encountered a similar situation in the past, and the tenant was not informed that this was the proper protocol. I find that the tenant did mitigate the issue by taking the following actions: calling their partner immediately to obtain assistance, using towels to clean the mess, and following up by contacting their insurer. Although the landlord may not agree that these actions are sufficient, I find that the tenant had honest intentions to mitigate the issue. Considering that the incident took place late at night, I find it

reasonable that the tenant did not want to disturb the landlord, especially when they did not deem the situation to be urgent or significant at the time. I find that the tenant is now aware of how incidents of similar nature should be addressed, and I am not convinced that the landlord's property would be put at significant risk.

Although the landlord and other tenant was indeed disturbed, I do not find that they were disturbed to the extent that justified the ending of this tenancy. Similarly, although the landlord is rightfully concerned about health risks and sanitation following such an incident, I am not convinced that the area has not been properly cleaned or sanitized to the extent that justifies the ending of this tenancy. I do not find that the landlord has provided sufficient evidence to support the lasting effects of such an incident. I am satisfied that the tenant had followed up with their insurer following the incident.

For the reasons outlined above, I find that the landlord has not satisfied me that this tenancy should end on the grounds provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated March 31, 2022, and this tenancy is to continue until ended in accordance with the *Act*. The landlord's application is dismissed without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I allow the tenant to recover the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated March 31, 2022, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord perform repairs and maintain the rental unit as required by section 32 of the *Act*,

I allow the tenant to recover the filing fee. I issue a monetary award in the tenant's favour in the amount of \$100.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this**

Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 26, 2022

Residential Tenancy Branch