



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPERMEN PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenant applied on April 8, 2022 for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated March 31, 2022 (the One Month Notice);
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised a concern regarding the service of documents.

Preliminary Matter

I dismissed the tenant's application for an order for the landlord to comply with the Act, regulation, and/or tenancy agreement, as the identical claim and submissions had been previously decided on in a prior decision, as noted on the cover page of this decision.

Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began in January 2020; rent is \$888.12, due on the first of the month; and the tenant paid a security deposit of \$437.50, and a pet damage deposit of \$437.50, which the landlord still holds.

The landlord testified they served the One Month Notice on the tenant in person on March 31, 2022, which the tenant confirmed. A copy of the One Month Notice is submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because the tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Details of the Event(s) section of the Notice states that the though the landlord provided 24 hours notice, the tenant denied the landlord access to the rental unit and would not let the landlord put in a new 40-gallon hot water tank which had to go into the closet. The Notice indicates that the tenant did not accept the storage area the landlords provided for the tools the tenant had stored in the closet. The Notice indicates that as of March 27, 2022 the tenant "is still saying water is still coming out on floor."

The landlord testified that in March 2022 a water pipe at the front of the building blew out, the repair of which resulted in 11 hot water tanks in tenant units leaking. The leaking tanks had to be replaced.

The landlord testified that they told the tenant they would need to replace the 20-gallon tank in the bathroom with a 40-gallon tank, which, because of its larger size, would need to go in the tenant's bedroom closet.

The landlord testified that because the tenant objected to that, as he had many tools stored in his closet, the landlord consulted the Residential Tenancy Branch, and was told that the landlord should offer the tenant storage space due to the closet space being taken away. The landlord testified the tenant wanted storage on the ground floor of the property. The landlord testified that after the tenant did not accept the offered storage space, and did not permit the landlord to replace the hot water tank, the landlord served the One Month Notice.

The landlord submitted copies of text messages and emails in support.

The tenant testified that the landlord had said that the new tank going in would be 85 gallons, which the tenant said was twice as big as the existing one. The tenant testified that he has not had use of his bedroom and closet since he moved in two years ago, as they are full of his renovation equipment. The tenant testified that when he moved in he was promised a storage locker on the ground floor, but that it was not provided by the landlord. The tenant testified he needs the storage on the ground floor as he has physical limitations due to illness. The tenant testified that the storage issue needs to be rectified before the hot water tank in the unit is replaced.

The tenant submitted documentary evidence in support, which he said he thought was from email because all of his correspondence with the landlord is by email.

When I asked the tenant if he prevented the installation of the hot water tank, he said he did for the 85-gallon tank, but not for a 40-gallon tank. The tenant submitted that the landlord should have installed a 40-gallon tank, and that there was not discussion of a 40-gallon tank.

The landlord testified that she did not know where the tenant got the idea that an 85-gallon tank was to be installed; she testified that the tenant was advised a 40-gallon tank would be installed. The landlord submitted as evidence an email to the tenant, dated March 25, 2022, which includes:

“We have to get the hot water tank in your apartment Like I said before it does have to go into your closet it’s a 40 gallon hotwater tank .”

[reproduced as in original]

When I asked the tenant if water had been leaking from his hot water tank, he testified that there was minor leaking on one day, when the plumber had visited to look at the tank, and not wiped up the work area afterward.

The landlord submitted as evidence a text message from the tenant, dated March 18, 2022, which states: “Looks like my hot water tank is leaking. Rusty water coming out under panel beside toilet.” A second text message from the tenant, dated March 27, 2022, includes: “Water still coming out on floor.” The landlord submitted as evidence a photo depicting a wet carpet in another unit; the landlord submitted that the water soaked down through the wall.

The landlord submitted she was seeking an order of possession for the end of the month.

Analysis

Based on the parties' testimony, I find the landlord served the tenant the One Month Notice in person on March 31, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

The landlord has provided testimony and supporting evidence demonstrating that though the landlord provided advanced notice, the tenant prevented them from accessing the rental unit to complete necessary maintenance to stop water leaking from the damaged hot water tank in the rental unit, putting the landlord's property at significant risk.

I acknowledge the tenant's testimony that the landlord had not provided storage as promised at the beginning of the tenancy. However, a dispute over storage does not permit the tenant to prevent the landlord from accessing the unit to complete the necessary repairs.

Therefore, I find the tenant has breached the Act, and the landlord may end the tenancy under section 47(d)(iii) of the Act, which states:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

...

(iii) put the landlord's property at significant risk.

Therefore, I find the landlord is entitled to an order of possession.

As the tenant is unsuccessful in his application, I decline to award him the filing fee.

Conclusion

The tenant's application is dismissed; the One Month Notice is upheld.

The landlord is granted an order of possession which will be effective at 1:00 p.m. on August 31, 2022.

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 15, 2022

Residential Tenancy Branch