Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: RP, MNDCT, LRE, FFT x2, CNC
Landlord: OPC, OPN, FFL

Introduction

On April 20, 2022 the Tenant filed an Application for Dispute Resolution for the Landlord's provision of repairs, compensation for money owed, restrictions/conditions on the Landlord's entry, and reimbursement of the associated filing fee.

On June 28, 2022 the Tenant filed a second Application for cancellation of the One Month Notice to End Tenancy for Cause (the "One-Month Notice") issued by the Landlord on June 21, 2022. That matter was linked at the Residential Tenancy Branch to the Tenant's earlier Application.

On July 11, 2022 the Landlord applied for an order of possession of the rental unit in line with the One-Month Notice, an order of possession in line with a written notice to end the tenancy from the Tenant, and reimbursement of the Application filing fee. With two applications from the Tenant already in place for the same tenancy, the Residential Tenancy Branch linked this Application to those of the Tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 19, 2022.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Tenant and the Landlord both attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing.

The Landlord confirmed they received the Tenant's initial Application Notice and evidence from the Tenant directly at the rental unit. The Tenant sent the Notice for their second Application to the Landlord via registered mail and the Landlord confirmed receipt of the same.

The Landlord sent the Notice of their Application to the Tenant via registered mail along with evidence, with one additional piece of evidence, a letter from a different tenant, delivered to the Tenant in person. The Tenant confirmed they received the same.

Preliminary Matters – relevant issues

The *Residential Tenancy Branch Rules of Procedure* 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 hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the notice to end the tenancy issued by the Landlord.

In line with this, I dismiss the Tenant's request for repairs, for monetary relief, restrictions on the Landlord's entry, and the associated filing fee for that Application. I dismiss these matters with leave to reapply.

On their Application, the Landlord applied for an order of possession based on a notice to end tenancy provided by the Tenant. There is no such written notice from the Tenant in the evidence. Given that the Landlord provided the same date that appears on the One-Month Notice they issued on "20/06/2022" in page 6 of 6 on the Application form, I find it more likely than not they provided this indication in error because it is the same date they issued the One-Month Notice. I dismiss this issue on their Application for this reason and focus on the issues listed below.

Issue(s) to be Decided

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

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

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and the Tenant each presented a copy of the tenancy agreement in their evidence. The tenancy began on October 1, 2020, and after the initial fixed term of one year, continued on a month-to-month basis. The initial rent amount of $1,030 did not increase over the course of this tenancy.

The Landlord pointed to clause 27 in the agreement regarding “liquid filled items”. They stated this was an indication that the Tenant was aware that aquariums, as owned by the Tenant here, presented a problem. As stated in the agreement “the landlord’s consent will include a requirement that the tenant provide continuing evidence of at least $1,000,000 of liability insurance . . .”

In their evidence, the Tenant produced a copy of their insurance as required. This shows the policy period from October 6, 2020 through to October 6, 2021. A renewal document shows the period from March 29, 2022 to March 29, 2023. In the hearing, the Tenant stated that the Landlord accepted them with this completed application, and knowledge that they had required pet insurance.

The Tenant also presented a copy of the Application for Tenancy they completed on September 25, 2020 showing the Landlord’s acceptance on that same day. The Tenant disclosed on that document that they had “fish, 2 budgies and 1 dog”.

The Tenant presented a copy of the “Caution Notice to Tenant” document that the Landlord issued to them regarding an occurrence on March 22, 2022. This was notice to the Tenant that they must remove both aquariums from the rental unit, to be done by April 25, 2022. On that same document, the Landlord indicated that this was grounds

for termination as per the *Act* s. 47, being a failure to comply with a material term of the tenancy agreement.

Another caution notice to the Tenant of the same date is in their evidence. This is a note from the Landlord about "all power breakers for electric heat are to be turned on and stay on." The Landlord added "no use of portable heater allowed" and "portable heaters to be removed from rental unit to be done today." This was with reference to s. 14 of the tenancy agreement, though that term itself refers to an annual rent increase. On this document the Landlord also indicated this was a breach of a material term of the tenancy agreement.

Another caution notice of the same date to the Tenant is in their evidence. This shows the Landlord notifying the Tenant that their unit needs to be "decluttered", where the "bedrooms and living room [are] piled with excess items". The Landlord referred to s. 27 of the tenancy agreement, giving the Tenant one month to follow through on this notice. The Landlord also indicated this was a breach of a material term of the tenancy agreement.

The Landlord provided a copy of their notice of entry to the rental unit for March 12, 2022 for "routine building/suite inspection." According to the Landlord in the hearing, this was the inspection that revealed the condition of the unit to them, prompting them to issue each caution notice listed above. The Landlord scheduled a follow-up inspection for April 25, 2022.

According to the Tenant, the Landlord conducted inspections in the rental unit specifically for the purpose of ending this tenancy. They felt this inspection was in response to the Tenant's request for repairs, and that was the original purpose. The Tenant called an electrical inspector for their own inspector because they felt the rental unit needed to be entirely rewired. The Landlord was aware of circuits overloading and wiring burning; in their estimation this was due to the Tenant's use of portable heaters. They were aware the Tenant called an inspector for that purpose because the Tenant did not believe the Landlord's own electrician on these issues. Further, the Landlord maintained the inspection was for the purpose of seeing whether the Tenant was complying with the notification to have the fish tanks gone.

Specific to the aquariums in the rental unit, the Tenant's account was that the Landlord initially stated "don't worry about the rest of it . ." The Landlord had agreed twice that the fish would just die naturally. The Landlord countered this by saying they offered to get rid of the fish by selling them, and even posted an ad online for the aquariums.

Specific to the insurance, the Landlord was aware that the Tenant's policy had expired in October 2021 and was only renewed in March. To this, the Tenant responded that they live on a budget and just did not have money for the insurance renewal at that time.

Both parties presented a copy of the One-Month Notice document, signed by the Landlord on June 20, 2022. This provided for the tenancy to end on July 31, 2022. The Landlord provided a "Proof of Service" document to show they served the document via registered mail on June 20.

On page 2 of the document the Landlord indicated the following reasons:

- tenant or person permitted on the property by the tenant has:
    - put the landlord's property at significant risk

- tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

- 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 provided the details on page 2 of the document:

1) two 50 gallon aquariums were not removed by April 25th, 2022 after written notice given for breach of a material term
2) electric breakers for apartment baseboard heaters turned off all winter causing mould issues
3) overloading of electrical breakers by using portable electric heaters causing fire risk to the building and safety of other tenants.

The Landlord stated their understanding was that the indication on the tenancy agreement refers to damage to the Landlord's property. They clarified that there was no illegal activity by the Tenant here.

The Landlord noted their one reason for issuing the tenancy was their inspection in the rental unit revealing the breakers for the baseboard heaters specifically shut off. They noted more than one possible heater. There was a large amount of clutter within the unit, and when no windows were open, that is when the mould inside the rental unit started.

Analysis

The *Act* s. 47 sets out the reasons for which a landlord may give a One-Month Notice. This includes the reasons indicated on that document the Landlord served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord provided the related caution notices they provided to the Tenant in this matter and spoke to the reasons in their oral testimony. On my evaluation of this evidence, and with consideration to the submissions of the Tenant here, I find the One-Month Notice is not valid.

I find the Landlord did not identify the need for written approval for the aquariums earlier. Though stated as such in the tenancy agreement, the Landlord seems to have let this one go for quite some time before making it an issue in spring of 2022, long after the agreement started in October 2020.

The Tenant had insurance in place; therefore, I am satisfied they knew of the need for that insurance. This bolsters the point that the Landlord did not make an issue of the aquariums previously. The Landlord was aware of the Tenant's lapse in insurance, though at that time in later 2021 they did not put the tenancy in jeopardy at that time. The Tenant did not have the means to renew their policy until March 2022 – I find the Tenant was aware of the primary importance of having insurance in place. I find the Landlord's approval – or at least their awareness – was implied along with way because they did not enforce the Tenant's supposed breach of a material term earlier.

In sum, the Tenant obtaining a renewal of their insurance – and I have in mind that they did so for the express purpose of "pet insurance" to do with the aquariums in place – carries more weight than the Landlord's very late insistence that written permission from the Landlord was required for aquariums to be in place. I find the Landlord knew about aquariums at the start of the tenancy, yet there was no notification from them along the way of the need for their express written permission. I find the Landlord has conflated this was a material term of the tenancy agreement.

Though the Landlord indicated there was illegal activity, they acknowledged this was not the case and focused instead on the damage to the property. They did not provide specific evidence of damage to the property or point to actions by the Tenant that would

be *likely* to damage their property. I find the question of mould was speculative, without actual proof thereof.

The Landlord indicated that various actions of the Tenant were breaches of a material term of the tenancy agreement. I find the actions or neglect by the Tenant as identified by the Landlord in their inspection visit in March 2020 are not violations of the tenancy agreement to a degree that they constitute separate breaches of any material term therein. As provided for in the Residential Tenancy Branch Policy Guideline 8 re: 'Unconscionable and Material Terms', a material term is one which both parties agree is so important that "the most trivial breach of that term gives the other party the right to end the agreement." I find the controversy of the Tenant's aquarium was not acted upon by the Landlord within a reasonable amount of time. Additionally, the Tenant was not expressly prohibited from using portable heaters, and there was no provision in the agreement for any mismanagement of the power supply within the rental unit.

For these reasons, I order the One Month Notice to be cancelled. I dismiss the Landlord's Application without leave to re-apply.

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

Because they are not successful in this hearing, the Landlord is not entitled to compensation for the cross-Application filing fee.

Conclusion

For the reasons above, I order the 10-Day Notice issued on February 25, 2022 by the Landlord is cancelled. The tenancy remains in full force and effect.

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: August 19, 2022

Residential Tenancy Branch