Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on April 1, 2022 (the "One-Month Notice");
- An order pursuant to s. 32 for repairs to the rental unit;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- Return of her filing fee pursuant to s. 72.

J.J. appeared as the Tenant. S.B. and M.F. appeared as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords advise that the One-Month Notice was served on the Tenant via email sent on April 1, 2022. The Tenant acknowledges receipt of the One-Month Notice on April 1, 2022 and confirmed that email was an approved form of service between the parties. I find that the One-Month Notice was served in accordance with the *Act* and was acknowledged received by the Tenant on April 1, 2022.

The Tenant advised that she served the Landlords with the Notice of Dispute Resolution. The Landlords acknowledge receipt of the Notice of Dispute Resolution in their mail. I find that pursuant to s. 71(2) of the *Act* that the Notice of Dispute Resolution was sufficiently served on the Landlords.

Preliminary Issue – Service of the Parties' Evidence

The Tenant advised that her evidence was uploaded to the Residential Tenancy Branch and testified to her understanding that the evidence was accessible to the Landlords. The Landlords testified that they did not receive the Tenant's evidence. The Landlords also testifying to their belief that uploading their evidence to the Residential Tenancy Branch made it accessible to the Tenant.

Rule 3.4 and 3.16 of the Rules of Procedure imposes an obligation on applicants and respondents to be prepared to demonstrate service of their application materials at the hearing. Rule 3.1 and 3.14 imposes an obligation on applicants to serve their evidence on each respondent. Similarly, Rule 3.15 imposes an obligation on respondents to serve their evidence on each applicant.

Presently, both parties operated under the misapprehension that by providing the evidence to the Residential Tenancy Branch that evidence would be accessible to the other side. That is not the case. The Tenant has an obligation to physically serve her evidence to the Landlords and the Landlords have the same obligation to serve the Tenant.

I find that neither party served their evidence on the other. Accordingly, as neither side received the other's evidence, it is not included in the record and shall not be considered by me.

As a practical consideration, I confirmed that the parties had the tenancy agreement and the One-Month Notice in their possession and proposed to those two documents being included in evidence. The parties confirm that they had those documents in their possession and consented to their inclusion. Accordingly, the tenancy agreement and One-Month Notice are included in evidence despite not being served and shall be considered by me.

Preliminary Issue – Tenant's Claim

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue in the Tenant's application is the enforceability of the One-Month Notice and whether the tenancy will continue or end. Further, the Tenant's claims under s. 32 (repairs) and s. 62 (order that the Landlord comply) may not be relevant should the tenancy end based on the One-Month Notice. Accordingly, I find that the Tenant's claims under ss. 32 and 62 are not sufficiently related to the primary issue, being the enforceability of the One-Month Notice. I sever those aspects of the claim pursuant to Rule 2.3 of the Rules of Procedure.

Should the tenancy continue, the Tenant's claims under ss. 32 and 62 will be dismissed with leave to reapply. If the tenancy ends and an order of possession granted, those claims will be dismissed without leave to reapply.

The hearing proceeded strictly based on the enforcement of the One-Month Notice.

Issues to be Decided

1) Should the One-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order of possession?
3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on October 31, 2020.
- Rent of $837.00 is due on the first day of each month.

- The Landlords hold a security deposit of $412.50 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence. The tenancy agreement includes a one-page addendum.

The Landlords advise that the One-Month Notice was issued on the basis of too many occupants within the rental unit, breach of a material term of the tenancy agreement, and unreasonable disturbance. A copy of the One-Month Notice was put into evidence.

The Landlords testified that they were given notice of that another occupant was living in the Tenant's rental unit following the complaint from a former tenant at the residential property who lived in the upstairs rental unit. The Landlords indicate that they texted the Tenant asking about the additional occupant and that the Tenant was not responsive. The Landlords advise that there was no written warning letter sent to the Tenant other than the text message they had discussed.

The Tenant testified that she has a boyfriend who has his own fixed address and that her boyfriend occasionally stays overnight at her place. The Tenant emphasized that the boyfriend is a guest and that she has no additional occupants.

The Landlords advise that the Tenant has an additional occupant living within the rental unit. I was directed to clause 2 of the addendum, which indicates that the maximum number of occupants within the rental unit shall not exceed 1 adult and that "[a]ny guests that are expected to stay in the home for a period exceeding one week need to be need to be (sic) discussed and approved by the landlords". The Landlords argued that the one-week period should be viewed as more than one week over the monthly term of the tenancy.

The Landlords argued that the Tenant breached clause 2 of the tenancy agreement and that the clause is material to the contract. The Landlords advise that utilities are covered by rent and they argued that the additional occupant imposes a financial cost on them as there is greater use of the utilities. It was also argued that there is limited parking on the property and the additional occupant impedes on the other tenants' ability to park. Finally, it was argued that the additional occupant causes additional wear and tear.

The Tenant again re-emphasized that her boyfriend does not live at the rental unit and advised that when he does come over, he parks on the street and not on the property.

The Landlords advise that the Tenant has caused an unreasonable disturbance to the upstairs tenant by running laundry late in the evening. They say that they requested that the Tenant not use the laundry facilities after 11:00 p.m., which they say was not complied with by the Tenant.

The Tenant indicates that she works late and comes home with dirty clothes, which necessitates her doing laundry later in the evening. The Tenant further advised that she was in contact with the previous upstairs tenant, who advised that they had no issue with the laundry being done by the Tenant.

The Tenant advised of a text message exchange that took place on March 22, 2022, which pertained to the issues raised of by the Landlords. The Tenant advised that she told the Landlords of her position with respect to these issues at that time.

Analysis

The Tenant looks to cancel the One-Month Notice.

Pursuant s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord. Presently, the One-Month Notice was issued on the basis of ss. 47(1)(c) (unreasonable number of occupants), 47(1)(d)(i) (unreasonable disturbance), and 47(1)(h) (breach of a material term).

The Landlords argue that the Tenant's boyfriend is an additional occupant. The Tenant denies this, saying he has his own fixed address and stays overnight periodically as a guest.

Marriam-Webster defines an "occupant" as "one who occupies a particular place *especially* **:** RESIDENT" and emphasizes that to reside somewhere is to "dwell permanently or continuously" within a domicile. The definition of a guest is listed as "a person entertained in one's house" or "a person to whom hospitality is extended".

During the hearing, the Landlords queried when a guest is an occupant based on the frequency of visits. There is no fixed number of days after which point an individual is no

longer a guest and becomes an occupant. It is context specific. Based on the definitions listed above, the key difference is that an occupant permanently resides within the rental unit and a guest is there on transitory basis.

Looking at the tenancy agreement, clause 2 of the addendum may provide guidance on the threshold of when the parties contemplated when a guest becomes an occupant. It states that guests that stay for longer than one week must be discussed and approved by the Landlords beforehand. The Landlords argued that the clause 2 should be interpreted as more than a week over a given month. I do not agree. The plain reading of clause 2 does not specify the term in which the week is to be calculated. It simply states that if a guest stays for longer than one week, the Landlords must be advised and approve the guest. I find that clause 2 is not instructive on the threshold question of when a guest becomes an occupant as it is vague on the term in which a week is to be calculated.

Given this, I am left with the basic definition that a guest is transitory and an occupant is permanent. It is undisputed that the boyfriend stays overnight some nights of the week. I have asserted testimony from the Landlords saying he is an occupant based on a complaint they received from the upstairs tenant and the asserted testimony from the Tenant denying the boyfriend is an occupant. The Tenant testified that the boyfriend has his own fixed address. The Tenant can have guests and the Landlords may not restrict guests as per clause 11 of the tenancy agreement.

There is no evidence to suggest that the boyfriend permanently resides in the rental unit. The only basis upon which the Landlords argue that the boyfriend occupies the space is from a complaint from the upstairs tenant. There are no direct observations by the Landlords. No witness statements. On balance, I find that the Landlords have failed to establish that the boyfriend occupies the rental unit. Accordingly, the Landlords have failed to show that the Tenant has an unreasonable number of occupants in the rental unit under s. 47(1)(c).

Without considering the materiality of clause 2 of the addendum, I find that the Landlords have failed to show that the Tenant’s boyfriend stayed for longer than a week and that the Tenant has not breached that term of the addendum. Further, the Landlords admit no warning letter was issued with respect to an alleged breach of clause 2. Section 47(1)(h) requires written notice of a breach of a material term and permit the tenant a reasonable amount of time to correct the breach. That did not occur

here. I find that the Landlords have failed to establish the notice was properly issued under s. 47(1)(h).

Finally, the Landlords argue that the tenant is causing an unreasonable disturbance. Again, there is insufficient evidence to make that finding. The Landlords appear to have issued the One-Month Notice entirely on the complaint of the upstairs tenant. That individual was not a witness. No witness statement from that tenant was put into evidence. No warning letters were issued. Indeed, the Tenant advises that the issue was raised with her by way of text message on March 22, 2022. The Landlords then issued the One-Month Notice on April 1, 2022.

There was no evidence put forward on the frequency the Tenants use of the laundry facilities in the evening, nor was there any evidence provided on the severity the disturbance. Temporary discomfort or inconvenience does not constitute an unreasonable disturbance. I find that the Landlords have failed to establish the grounds for ending the tenancy under s. 47(1)(d).

I find that the Landlords have failed to show that the One-Month Notice was properly issued. The One-Month Notice is, therefore, cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The One-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As the tenancy has not ended, the Tenants claims under ss. 32 and 62 of the *Act*, which were severed under Rule 2.3 of the Rules of Procedure, are dismissed with leave to reapply.

The Tenant was successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlords pay the Tenant's $100.00 filing fee. Pursuant to s. 72(2), I direct that the Tenant withhold $100.00 from rent payable to the Landlords on **one occasion** in full satisfaction of her filing fee.

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 03, 2022

Residential Tenancy Branch