



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, LRE, RR, ERP, FFT

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on May 3, 2022:

- to dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- to suspend or set conditions on the Landlord’s right to enter the rental unit
- reimbursement of the Application filing fee.

On June 7, 2022 the Tenant amended their Application to incorporate their dispute of the Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”).

On August 10, 2022 the Tenant amended their Application to add a request for a reduction in rent for repairs not completed by the Landlord, and for emergency repairs for health or safety reasons.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 6, 2022. In the conference call hearing, I explained the process and offered each party – both the Tenant and the Landlord – the opportunity to ask questions. Each party presented oral testimony and presented their documentary evidence in the hearing.

Preliminary Matter

At the start of the hearing, the Tenant stated they served notice of this hearing to the Landlord via registered mail to the address the Landlord provided on the One-Month Notice. This included initial evidence. They provided an image of a postage receipt dated May 14 and a registered mail label. The Landlord confirmed they received a hearing package from the Tenant on May 14. They stated they received no evidence from the Tenant.

From this evidence and confirmation, I find the Tenant notified the Landlord of this hearing, providing the information as required.

The Tenant stated they notified the Landlord of their amendments to both addresses provided by the Landlord alternately on either of the notices to end tenancy. The Tenant provided a registered mail receipt and label, with the receipt bearing the date of June 7, 2022. From this evidence I am satisfied they notified the Landlord of their June 7 amendment, minus contrary evidence or statements from the Landlord.

The Tenant provided evidence to the Residential Tenancy Branch on August 31, 2022, approximately one week prior to this scheduled hearing. This concerned repairs in the rental unit, consisting of video and pictures, and the Tenant could not present how they conveyed this evidence to the Landlord. As per Rule 3.14 – that portion reading “documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch . . . not less than 14 days before the hearing” – I apply Rule 3.17 and give no consideration to this evidence in this hearing.

The Landlord provided evidence for this hearing on September 5, 2022, the day prior to the scheduled hearing. As per Rule 3.15, I find they provided this evidence to the Residential Tenancy Branch less than seven days before the hearing. By Rule 3.17, I exclude this late evidence from consideration in this hearing.

Preliminary Matter – related 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 hear 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 any of the notices to end tenancy issued by the landlord.

In line with my application of Rule 6.2, I sever the Tenant's application for suspension/set conditions on the Landlord's right to enter the rental unit, their claim for a reduction in rent, and emergency repairs. On these grounds, I grant the Tenant leave to re-apply.

Issue(s) to be Decided

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

Is the Tenant entitled to cancellation of the Two-Month Notice?

If the Tenant is unsuccessful on either, is the Landlord entitled to an Order of Possession 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*?

Background and Evidence

The Tenant submitted a copy of the relevant pages of the tenancy agreement in their evidence. This shows the tenancy starting in September 2020 on a month-to-month basis. The Tenant signed this agreement with a previous owner, prior to this Landlord coming in mid-October. The rent amount of \$2,300 did not increase over the course of the tenancy. While the Tenant submitted the Landlord here proposed to increase the rent, this Landlord responded that they never had that kind of talk with the Tenant.

a. One-Month Notice

The Tenant provided a copy of the One-Month Notice. The Landlord stated they served this by attaching it to the door/mailbox of the rental unit. The Landlord gave the date of May 31, 2022 as the move-out date. The Landlord provided a separate page showing a list of details, dating from October 2021 through to April 23, 2022. This shows a number of incidents about banging on the wall, smoking inside the house, the Tenant not allowing the Landlord entry for an inspection, and police calls for miscellaneous incidents. The Landlord also wrote: "videos and text message will be a proof"

On the page 2 of the document, the Landlord provided the reasons they issued this document:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk.

In the hearing, the Landlord described 4 or 5 police calls because of the Tenant fighting, with other people concerned about their sleep because of music.

Additionally:

- concern with others' safety because of the Tenant's child throwing balls on them
- the Tenant never allows the Landlord to do a home inspection
- rent was late for approximately 5 months
- the neighbouring unit resident was walking home when the Tenant threatened to beat them
- use of an air horn at approximately 1am or 330am
- the Tenant attending to the neighbours' acquaintance workplace to confront them about issues at the rental unit – this made that acquaintance afraid to attend their own workplace
- late rent incurs fees of \$50 per day from the bank

A witness attended for the Landlord in the hearing and described:

- they texted the Tenant to lower the music volume and the Tenant said “okay” one time
- another incident involved the Tenant smoking and did not stop when requested to do so, then “freaked out”
- the Tenant recorded on social media their mocking of the neighbour – their acquaintance could not handle that exposure and thus had to moved out from the neighbouring rental unit
- the Tenant started their own vehicle alarm because of the witness taking garbage out near that vehicle

The Tenant in the hearing responded to what they heard. The Tenant drew upon the previous hearing they had with this Landlord where the same charges were raised, with the result being the previous Arbitrator cancelling an earlier notice to end the tenancy for the same reasons and evidence the Landlord provides here. They described smoking outside the rental unit, and this results in the neighbouring resident smelling that through the vents. They observed the witness here staring at them, and the Landlord also set up a camera that is pointed directly at the rental unit at all times which is intimidating.

The Tenant fundamentally objects to any accusation of racism from them; rather, they refuse to back down when the Landlord’s witness talks to them in a certain manner.

The Tenant also clarified that they have never been late paying rent, with a later-afternoon etransfer for a payment only being processed the following day. More recently, they have been paying with a cheque to avoid this difficulty.

b. Two-Month Notice

On their amendment to the Application on June 7, the Tenant added their dispute to the Two-Month Notice. On their Application they did not provide the date of service of this document by the Landlord. In their evidence, the Tenant provided a single-page image of the Two-Month Notice, signed by the Landlord on May 29, 2022. This provided for the move-out date of July 30, 2022.

In the hearing, the Landlord provided that they need the rental unit for their own family member. They just want this family member to be independent, and that is the reason they purchased this rental unit.

The Tenant presented that there was a 'for sale' sign present at the rental unit just before summer 2022, and at one point this Landlord indicated that they were going to tear the place down. Suddenly, this sign came down. When they inquired with the Landlord, the Landlord told them the sale was none of their business. In their separate discussion with the listed realtor, that realtor told them "it's a good time" in reference to a sale of the rental unit. From this information, the Tenant submits that the Landlord needing the rental unit for their own family member is a lie.

To this information in the hearing, the Landlord responded by saying that the sign was up at the rental unit; however, it was only for a realtor's advertisement, and not indicating the rental unit was actually for sale.

Analysis

a. One-Month Notice

The *Act* s. 47 of the *Act* states, in part:

(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
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk.

In this matter, the onus is on the Landlord to provide proof that they have cause to end the tenancy. Overall, they have not provided sufficient evidence to prove the details they indicate on page 3 and the extra attached page of the One-Month Notice. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here. This stems solely from no evidence submitted by the Landlord for this hearing, despite knowing of the Tenant's Application from May 2022. The Landlord must work towards being able to prove they have a valid reason to end the tenancy, and they did not do so here.

Given the Tenant's reference to the Landlord's previous attempt to end the tenancy for cause on exactly similar grounds, with a replication of the list and incidents they described, this looks like another attempt by the Landlord to end the tenancy on specious claims. The Landlord must provide sufficient evidence in order to affect an end to the tenancy. I caution the Landlord that each successive notice to end tenancy they issue lessens the likelihood of their charges against the Tenant here, minus strong evidence showing the Tenant's breaches of the *Act* and/or the tenancy agreement. Successive notices to the Tenant could constitute an infringement on their right to quiet enjoyment in the rental unit, free from unreasonable disturbances.

Specific to the charges of the Landlord here, I note the following:

- the Landlord and the witness referred to the Tenant's smoking that causes difficulty; however, there is no proof the Tenant is violating the tenancy agreement on that specifically, and there is no record of prior warnings
- the Landlord described late payment of rent; however, that was not indicated specifically as a reason to end the tenancy on page 2 of the One-Month Notice, and there was no record of communication to/from the Landlord and Tenant about repeated instances of late payment of rent (again a lack of evidence)
- the only evidence that could possibly show proof of banging or other excessive noise from the Tenant is either audio or video evidence and the Landlord did not provide that here. There is thus no objective measure of excessive noise or sound leading to disturbance of others
- there is no record of the Landlord giving notification to the Tenant – as they are required to do – when intending to inspect the rental unit. At this stage, the Landlord must give the Tenant written notice at least 24 hours in advance of their intended visit, and there is no record here that they did so
- there is no reference to dates of the Tenant attending to the witness' workplace and "making [them] uncomfortable" – in any case this is an entirely subjective measure and there is no specific behaviour noted that has anything to do with the tenancy.

The Landlord installing cameras that are inappropriately focused on the rental unit could also constitute a breach of the Tenant's right to quiet enjoyment. Presumably the footage would capture evidence of the Tenant's breaches that are grounds to end the tenancy; however, the Landlord did not draw upon any of that evidence here.

In summary, there are bare allegations from the Landlord, with no evidence to make the allegations reliable. The Landlord is completely without credibility on anything they present in this attempt to end the tenancy.

For these reasons, I order the One-Month Notice to be cancelled and there is no order of possession to the Landlord here.

b. Two-Month Notice

The Act s. 49 grants legal authority to a landlord to end a tenancy for the reasons listed therein. A landlord must issue a notice to end the tenancy. In this present matter, the Landlord has the burden of proof to show there is sufficient reason to end the tenancy. They also bear the burden of proof to show they used the correct legal means for doing so. The subsection 49(7) specifies that a notice under this section must comply with s. 52, form and content of said notice.

The following s. 52 states, in order to be effective, the notice must be in writing and must:

- (a) be signed and dated by the Landlord or Tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,
. . . and
- (e) when given by a Landlord, **be in the approved form.**

Here, the Tenant provided a record of a single page of the Two-Month Notice. Above I provided rationale on why the Landlord's evidence is excluded from consideration. This leaves no complete form of the Two-Month Notice in the record. With only a single page of the four-page document in the record, I am not satisfied the Landlord used the approved form, in full, for the purpose of notice to the Tenant. Without evidence to show compliance with s. 52, the core of s. 49 is not established in the evidence.

For this reason, this Two-Month Notice is cancelled. The tenancy will not end for the reason of the Landlord's use of the rental unit, and there is no order of possession to the Landlord.

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

Conclusion

For the reasons above, I order the One-Month Notice and Two-Month Notice both are cancelled, and 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: September 28, 2022

Residential Tenancy Branch