



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 24, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice to End Tenancy for Cause dated June 24, 2022 (the "One Month Notice");
- a monetary order for damage or compensation;
- an order that the Landlord comply with the *Act*; and
- an order granting the recovery of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the Landlord Z.T. confirmed receipt of the Tenant's Application, amendments, and documentary evidence. Z.T. stated that the Tenant had only served Z.T. with these documents and failed to serve the documents to D.T.. During the hearing, Z.T. confirmed that she was able to share the materials with D.T., who was able to review the documents, consider them, and was prepared to respond to them during the hearing. The Tenant confirmed receipt of the Landlord's documentary evidence. I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an 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.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, and for an order that the Landlord comply with the *Act* are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice are the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on June 1, 2020. Currently, the Tenant pays rent in the amount of \$1,650.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$800.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The parties testified and agreed that the Landlords had served a One Month Notice dated April 15, 2022 however the Notice was later replaced by the June 24, 2022 One Month Notice. The Landlords stated that they served the Tenant with the One Month Notice on June 24, 2022 with an effective vacancy date of July 31, 2022 by attaching it to the Tenant's door. The Landlords' reasons for ending the tenancy on the One Month Notice are;

The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord.

The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Landlords stated that there has been an ongoing dispute between the parties regarding access to common areas at the rental property. The Tenant is of the impression that the Landlords are breaching her quiet enjoyment of her rental unit by accessing common areas without proper notice. The Landlords are of the impression that common areas can be accessed by the parties without notice. The Landlord referred to the tenancy agreement which sets out the specific areas in which the Tenant has exclusive use of;

“On May 28, 2020, the Tenant and Landlord signed a tenancy agreement to rent the house at 281 Saddle Mountain Road for use as residential premises (“the Property”). The property is described as follows: A 5 bedroom, 2 bathroom house with carport, garden plot and horse pasture.”

“On May 28, 2020, the Tenant and Landlord signed a tenancy agreement containing a clause stating that: “The landlords will continue to have access to the property during the term of the lease, including the garden, wood shop, pumphouse, pumptrack, and pasture. Permission to access these areas will not be required from the tenant, however notification of extended use will be provided as a courtesy (i.e. for use of sawmill).”

On May 28, 2020, the Tenant and Landlord signed a tenancy agreement containing a clause stating that: "The Tenant will have access to the shared garden and will be responsible for watering, weeding and general maintenance."

The Landlords stated that the Tenant became confrontational beginning on September 7, 2020 which has continued periodically by taking photographs and videos of the perceived violations of the Tenant's privacy. The Landlords stated that at times, the Tenant's surveillance of the Landlords actions takes place at night, which violates their privacy.

The Landlords stated that on April 11, 2022 the Tenant and her guests confronted the Landlord while he was working in the garden over a disagreement surrounding use of soil/manure at the rental property. The Landlords stated that this interaction almost became physical.

The Landlords stated that the Tenant and the Tenant's guests have also put the Landlord's property at significant risk. The Landlords stated that on May 28, 2020, the Tenant and Landlord signed a tenancy agreement containing a clause stating that: "The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Property or to any furnishings supplied by the Landlord and the Tenant will obey all rules and regulations of the Landlord regarding the Property".

The Landlords stated that on August 7, 2021 the Tenant's guests caused damage to the door of the shed. The Landlords stated that the Tenant denied the damage occurred, but later acknowledged it was caused by her guest.

The Landlords stated that the Tenant has made alterations to the rental property in October 2021, by excavating a two section of the property to build gardens. The Landlords stated that this was done without the Landlords permission and could have caused damage to nearby waterlines, septic field, and tree roots. The Landlords stated that they cautioned the Tenant at that time, stating that the Tenant would require written permission prior to conducting any future alterations.

The Landlords stated that on April 11, 2022 the Tenant hand dug a section of the lawn for the purpose of installing a sweat lodge. The Landlords stated that the Tenant also failed to inform the Landlord that a bear damage the shed door.

In response, the Tenant confirmed having received the One Month Notice on June 24, 2022. The Tenant stated that the common areas are not clearly outlined in the tenancy agreement. The Tenant stated that she is responsible for maintaining an area that is considered to be a common area, but would imply that its for her exclusive use given she maintains this area.

The Tenant stated that the Landlord continuously wonders around the property without prior permission and makes use of heavy-duty equipment on the property. The Tenant denies causing damage to the property and that the gardens were installed over a year ago at a considerable expense. The Tenant acknowledged that she dug a three-inch shallow area for the installation of a sweat lodge. The Tenant states that she does not confront the Landlord, but rather, the Landlords are aggressive and approach her.

Both parties submitted a significant amount of documentary evidence which consists of photos, written statements, emails, and text communications between the parties in support of their positions.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with the One Month Notice on June 24, 2022. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the parties have had disputes regarding the use of common areas. I find that the "common area" are well listed on the picture of the rental property provided by the Landlord, which is referred to in the tenancy agreement between the parties. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlords have accessed any area of the rental property to which the Tenant has exclusive use of.

I find that the Landlords are not required to provide the Tenant prior notice before using common areas as listed in the agreement/picture of the property which outlines the common areas which can be accessed by both parties.

I find that the Landlords have served the One Month Notice for incidents that have occurred throughout the tenancy, much of which took place over a year ago. I find that the passage of time between the infractions and the Landlords' subsequent service of the One Month Notice takes away from the level of Cause to end the tenancy.

I find that the Landlords provided insufficient evidence to demonstrate that the Tenant or her guests have significantly interfered with or unreasonably disturbed the Landlords to an extent that the tenancy should end. Furthermore, I find that the Tenant's alteration of the lawn for her use of a sweat lodge does not constitute significant risk to the Landlords' property.

Nevertheless, the Tenant is now warned that communication with Landlords should be reasonable and respectful. The Tenant is also required to obtain prior written permission from the Landlord before conducting any alterations to the rental property. Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy. With respect to the use of common areas, the Landlords are required to ensure that the Tenant's right to quiet enjoyment is upheld.

In light of the above, I cancel the One Month Notice, dated June 24, 2022. I order the tenancy to continue until ended in accordance with the Act. I decline to award the Tenant with the filing fee given they have breached the tenancy agreement, just not to the extent that the tenancy should end. As such, I dismiss this claim without leave to reapply.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated June 24, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: September 21, 2022

Residential Tenancy Branch