



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, MNDCT, 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 tenants applied on June 16, 2022:

- for an order to cancel a One Month Notice to End Tenancy for Cause, dated June 13, 2022 (the One Month Notice);
- to dispute a rent increase that is above the amount allowed by law;
- for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement;
- for compensation for monetary loss or other money owed; and
- the filing fee.

Those present 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

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenants' application to dispute a rent increase that is above the amount allowed by law; for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and for compensation for monetary loss or other money owed.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, are the landlords entitled to an order of possession?
- 3) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began March 15, 2018; rent is \$1,218.00, due on the first of the month; and the tenants paid a security deposit of \$600.00, which the landlords still hold. The rental unit is in the basement, and the landlords live in the upper portion of the property.

The tenants' application indicates there is no written tenancy agreement.

Landlord RM testified he served the One Month Notice on tenant JG in person on June 13, 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 an effective date, states the reason 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 residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property.

The Details of the Event(s) section of the One Month Notice states that during the night of May 28, 2022, tenant JG's son entered the landlords' unit without permission and while the landlords were sleeping, and stole over \$100.00; the Notice states that the

tenant's son did the same thing on the night of May 29, 2022, stealing an undetermined amount of money. The Notice states the landlords filed a police report.

Landlord RM testified the landlords served the Notice as they do not feel comfortable with the tenant's teenaged son living below them in the property, and consider him a danger.

Tenant JG testified that the landlords had not locked the door between the units, and that was how the tenant's son had been able to access the landlords' unit; he did not force his way in.

The tenant testified his son returned the money and apologized to the landlords, and the following day the landlords said they were happy with the apology and that things were resolved.

The tenant testified that on June 2, 2022, the landlords gave him a letter, submitted as evidence, stating that the landlords wanted to raise the rent. The tenant testified that after he refused the increase, the landlords threatened to evict the tenants.

The tenant testified there is another tenant who resides in the property, sharing a common space with the landlords.

Analysis

Based on the parties' testimony, I find the landlord served the tenants the One Month Notice in person on June 13, 2022, in accordance with section 88 of the Act, and that the tenants received it on the same day.

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

Rule 6.6 provides:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The landlords have testified that as a result of the tenant's son twice entering their unit while they were sleeping, and stealing from them, they no longer feel safe with him living in the property. The landlords have not provided testimony on any impact the event had on the other tenant who lives in the property, sharing a common space with the landlords, and that tenant did not attend the hearing to provide witness testimony.

Section 47(1)(e)(ii) and (iii) state:

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:

...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

...

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord ...

I note that while 47(1)(e)(iii) refers to both "another occupant or the landlord," 47(1)(e)(ii) refers only to "another occupant of the residential property," without referring to the landlord.

As the landlords have not provided testimony or presented evidence proving how the illegal activity of the tenant's son has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property, I find, on a balance of probabilities, that the landlords have failed to prove the reason for the One Month Notice.

Therefore, I grant the tenants' request to cancel the One Month Notice, and find that the tenancy will continue until it ends in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlords to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

In closing, I draw the attention of the parties to section 13(1) of the Act, which states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Conclusion

The tenants' application is granted. The tenancy will continue until it is 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 29, 2022

Residential Tenancy Branch