



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenants seek 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 2, 2022 (the “One-Month Notice”); and
- return of their filing fee pursuant to s. 72.

V.S. and T.S. appeared as the Tenants. S.A. appeared as the Landlord.

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 Tenants advised that their application materials were served on the Landlord. The Landlord acknowledged receipt of the Notice of Dispute Resolution but denied receipt of the Tenants’ evidence. The Tenants were not specific on what had been served, indicating everything that the Residential Tenancy Branch provided them was served.

With respect to the Notice of Dispute Resolution, I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served based on its acknowledged receipt by the Landlord. With respect to the Tenants’ evidence, I find that the Tenants have failed to demonstrate it has been served such that it would be inappropriate to include it into the record. However, the One-Month Notice was provided with the Tenants application materials. I enquired whether the Landlord consented to its inclusion despite not having been served as the Landlord failed to provide it herself. The Landlord consented to its inclusion. Accordingly, I included the copy of the One-Month Notice put into evidence by the Tenants.

The Landlord advised that the Tenants were served with her evidence, which the Tenants acknowledge receiving. I find that pursuant to s. 71(2) of the *Act* the Tenants were sufficiently served with the Landlord's evidence based on its acknowledged receipt.

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) Are the Tenants entitled to the return of their 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 Tenants took occupancy of the rental unit on June 1, 2021.
- Rent of \$2,200.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,100.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the Landlord. I am advised by the parties that the rental unit is a condominium within a larger residential property. The tenancy agreement includes an addendum signed by the Tenant V.S. in which it was acknowledged that the Tenants were to comply with the strata bylaws.

The Landlord advised that she served the One-Month Notice on the Tenants by way of mail, which the Tenants acknowledge receiving on April 5, 2022. The One-Month Notice lists various reasons for ending the tenancy, including the following:

- That the tenant or person permitted onto the property by the tenant:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- That the tenant or person permitted onto the property by the tenant has engaged in illegal activity that has or is likely to adversely:

- affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord; and
- jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord testified that she was contacted by the strata president on March 15, 2022 in which she was advised that one of the Tenants jumped from the rental unit balcony into the outdoor space belonging to the occupant directly below the rental unit. I am told by the Landlord that the police were contacted and that the strata issued a bylaw violation on March 18, 2022 with respect to the incident. The Landlord's evidence includes copies of the bylaw violation letter and a video of the incident taken from the other occupant's unit.

The Tenant T.S. confirmed that on March 15, 2022 he was getting ready in the morning and went out onto the balcony and closed the door behind him. He says that the door behind him locked and that he was outside without a jacket in colder weather. He further says that he waited on the balcony for 20 minutes, called his co-tenant who did not answer, and did not have the Landlord's contact information to assist him in returning through the balcony door.

T.S. admits that he jumped from the balcony, which I am told is on the second floor, into the space belonging to the occupant beneath the rental unit. T.S. says that this triggered an alarm and that the police were notified and showed up shortly thereafter. The Tenant T.S. says he waited for the police to arrive, explained what had happened, the police left, and nothing else came of the incident.

The Landlord further testified that the One-Month Notice was issued following noise complaints from others at the residential property. The Landlord advised that the strata, again, issued a bylaw violation with respect to the noise complaint on March 18, 2022. The Landlord indicates that she had received noise complaints from other occupants at the residential property prior to the noise violation. The Landlord provides no statements with respect to the noise complaints.

The Tenants deny making excessive noise and indicate that they have spoken to their neighbours, none of whom raised issue with noise. I am further told by the Tenants that they leave early in the morning and that they are not up late as is alleged by the strata complaint.

The Landlord raised complaint with respect to the number of maintenance calls she had received from the Tenants during the tenancy. However, the Landlord testified at the hearing that these are not why she issued the One-Month Notice and that the primary issues related to the March 15, 2022 incident and the noise complaint.

The Landlord admits that she never issued a warning letter with respect to either March 15, 2022 incident or the noise complaints prior to serving the One-Month Notice.

Analysis

The Tenants file to cancel the One-Month Notice.

Under 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. In this instance, the One-Month Notice was issued on the basis of the following sections:

- 47(1)(d)(i) (unreasonable disturbance);
- 47(1)(d)(ii) (jeopardizing health and safety);
- 47(1)(e)(ii) (illegal conduct that adversely affected quiet enjoyment); and
- 47(1)(e)(iii) (illegal conduct that jeopardized a lawful right or interest).

I accept the Landlord's evidence that the One-Month Notice was served via mail. This was not disputed by the Tenants who acknowledge its receipt on April 5, 2022. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and was received on April 5, 2022 as acknowledged by the Tenants at the hearing.

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Pursuant to s. 47(4) of the *Act*, a tenant may file an application disputing the notice but must do so within 10 days of receiving it. In this instance, the Tenants filed their application on April 5, 2022. I find that the Tenants filed within the 10 days permitted to them under s. 47(4).

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.

In this instance, there is no dispute with respect to the particulars of the March 15, 2022 incident: the Tenant T.S. jumped from the balcony into the yard below and the police showed up after an alarm was triggered. T.S. testified that he did so because he was locked outside on the balcony. I accept T.S.'s testimony on this point as it is an entirely plausible explanation.

The question is whether this conduct warrants ending the tenancy on the grounds listed under the One-Month Notice. I am not satisfied that it is. To be clear, the Tenant incidentally trespassed onto the neighbour's property, though I cannot say that this was done without reason or with ill intention. The Tenant was locked outside, had no means of re-entering the rental unit, attempted to contact his co-tenant and had no other means of contacting someone to re-enter the unit. He made a choice, one that happened to trigger an alarm. The police attended, he waited for them, explained what happened, and nothing more came of the incident.

I find that the incidental trespassing does not constitute illegal activity at all such that the grounds under ss. 47(1)(e)(ii) and 47(1)(e)(iii) do not exist. I further find that the conduct with respect to the balcony does not rise to the level of either jeopardizing the health, safety, or lawful right of the other occupant or constitute an unreasonable disturbance or significant interference for the other occupant. The conduct does not meet the criteria under ss. 47(1)(d)(i) or 47(1)(d)(ii). It seems to me that the issue has been blown out of proportion given that the trespass was with explanation, isolated, and entirely innocent. It was a mere trifle within the continuum of conduct associated with trespassing.

With respect to the noise complaints, the Landlord has provided no evidence to support noise complaints were made by the other occupants other than a complaint from the strata. There is no statement from the other occupants at the building. No evidence with respect to noise levels, frequency, or other such relevant information. The Tenants specifically deny any noise issues whatsoever. I am told by the Tenants that they have not received warning or complaint with respect to noise prior to receiving the One-Month Notice. This point is confirmed by the Landlord when she admitted she has not issued any warning letter prior to issuing One-Month Notice.

I have insufficient evidence to find that any excessive noise issues are present at all and certainly do not have sufficient evidence to support a finding that the noise constituted an unreasonable disturbance or significant interference. I find that the Landlord has failed to establish that noise issues constituted an unreasonable disturbance or significant interference under s. 47(1)(d)(i).

The notice lists maintenance issues in the description but does not specify that it was issued under s. 47(1)(g) of the *Act*. The Landlord mentioned these maintenance issues in her submissions at the hearing. However, the Landlord also admitted that these were not why she sought to end the tenancy and that the One-Month Notice was served following the complaints from the strata. I find that the maintenance issues are not properly set out under the One-Month Notice, were admitted by the Landlord to not have been the reason for why she issued the notice, and cannot constitute the grounds for ending the tenancy under the circumstances.

The Landlord made further mention of to the addendum where the Tenants agreed to adhere to the strata bylaws. However, the One-Month Notice was not issued based on a breach of a material term of the tenancy agreement. Accordingly, I make no findings or consider this argument made by the Landlord as it is not relevant to whether the One-Month Notice before me is enforceable.

I find that the Landlord has failed to prove that the One-Month Notice was properly issued under the *Act*. Accordingly, I grant the Tenants application and cancel the One-Month Notice, which is of no force or effect.

Conclusion

I grant the Tenants application and cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants were successful in their application. I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants' \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenants withhold \$100.00 from rent payable to the Landlord on one occasion in full satisfaction of their 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: September 28, 2022

Residential Tenancy Branch