



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Camp Tamiyd Inc, corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by agents TS and JS and counsel BR. The tenants SM, and NM also appeared with counsel TM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rule of Procedure 6.11. The parties were affirmed.

The landlord confirmed receipt of the dispute notice and tenants’ evidence package. The tenants confirmed receipt of the landlord’s evidence package in response to the dispute notice. Service is confirmed pursuant to sections 88 and 89 of the Act.

Preliminary Issue

Rule 2.3 of the RTB Rules of Procedure states that “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.” This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The tenants applied for an order compelling the landlord to comply with the Act, regulations and the tenancy agreement. This issue is not related to the dispute of the One Month Notice and is therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on this issue. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenants? If so, is the landlord entitled to an Order of Possession?
2. Are the tenants entitled to reimbursement for filing fees?

Background and Evidence

Relevant evidence, complying with the RTB Rules of Procedure, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The rental unit is located on land leased by the landlord from the land owner. It is one of a number of cabins located on the leased land. There is no written tenancy agreement between the landlord and tenants. Both parties agree that the tenancy commenced in a cabin ("the Gatehouse") on November 9, 2018. There was no specific agreement for the term of the tenancy. The tenants pay \$650.00 per month for possession and use of the Gatehouse, and shared resources, such as allowing the tenant to assign or sublet the rental property pursuant to section 65 of the Act utilities and water amongst all persons occupying the leased land. There was no security deposit taken.

The tenants renovated the Gatehouse to suit their needs with the consent of the landlord, and the tenants stated it is now a house as opposed to a cabin. At some time in 2018, the tenants sought and were granted permission by the landlord to conduct renovations on another cabin in close proximity to the Gatehouse. The parties agree that this cabin was uninhabitable and needed work to make it habitable, however they disagreed about the extent of the work needed to make it habitable. In the opinion of the landlord, the renovations undertaken by the tenants were much more significant than necessary, but they agreed to allow the tenants to conduct the renovations as they wished. The tenants intended for their daughters to eventually inhabit the second cabin.

The parties agree that the roof of the second cabin was removed, as were windows and walls. The tenants stated this work was necessary to make the cabin safe, leak free, and free of rodent droppings. The landlord did not believe the work was necessary to that extent but understood that the tenants were going to complete the renovations and make the cabin habitable.

The tenants stopped the renovations on the second cabin, leaving it without windows and some supporting walls. At the time the tenants stopped the work, the second cabin was not yet habitable. The tenants state that they stopped work as a result of an email from the landlord saying that there was a dispute between the landlord and the property owner that was not resolved and advising all tenants not to conduct work on the property. The landlord states that the email was taken out of context, they wanted the tenants to finish the work on the second cabin and had several verbal discussions with the tenants making it clear that the work on the second cabin must be completed.

As a result of the tenants' failure to complete the renovations on the cabin, the landlords issued the One Month Notice. The basis of the One Month Notice was that the tenants had caused extensive damage to property starting a major renovation and failed to complete the renovation work, resulting in the cabin being uninhabitable.

The second cabin was never inhabited, and the tenants have paid no rent for the second cabin.

Analysis

Does the Act Apply?

The landlord's counsel submitted that the Act applies to this arrangement, and the tenants' counsel did not directly address this issue. I have considered the evidence that the tenants are exclusively occupying a home on the leased land, the Gatehouse, and are paying monthly rent for the use of that property along with other amenities such as water. All of these facts are evidence establishing that the parties intended to create a tenancy. Additionally, tenants' counsel did not take issue with the application of the Act in this situation. I find therefore that the Act does apply to this situation and that I have jurisdiction over this matter.

One Month Notice

The tenants confirmed receipt of the One Month Notice dated September 4, 2022. A copy of the One Month Notice was submitted in evidence. Service is in accordance with section 89 of the Act.

The One Month Notice was issued for cause pursuant to section 47 of the Act, specifically that the tenants caused extraordinary damage to the property and did not do repairs to the property damage as required. The Act does not require that the damage be done to the specific rental unit occupied by the tenants, damage to the property in general can be the basis for the issuance of a One Month Notice.

The undisputed evidence of both parties is that the work done on the second cabin by the tenants was undertaken to make the cabin habitable. The work was undertaken at the consent of the landlord. There may have been disagreement about the nature of the work needed to be done, however the landlord still consented to the work the tenants were doing. While the landlord might have wanted the renovation to be completed, and consent for the work was given by the landlord on that basis, the fact that work remains to be done on the second cabin does not mean that the initial work done by the tenants should be characterized as damage. I find that it is more closely characterized as failure to complete work requested by the tenants and agreed to by the landlord, a contractual failure, and as such is not a reason to end a tenancy.

To illustrate the difference, if a tenant took it upon themselves to paint a portion of the landlord's property without the landlord's consent, that is a different situation than the landlord and tenant agreeing to have the tenant paint a portion of the property and the tenant fails to complete the painting or completes it in an unsatisfactory manner.

The parties agree that the cabin started in an uninhabitable condition and remains that way. Therefore, any work done by the tenants did not cause extraordinary damage to the landlord's property within the meaning of the Act. The Act is specific, it is not any damage that would form cause to issue a One Month Notice, it is only proof of **extraordinary** damage to the property that would permit the tenancy to be ended by the landlord.

I find that the One Month Notice is not valid and is therefore cancelled. As the tenants were successful in their application they are entitled to recover the \$100.00 filing fee for their application. In accordance with section 72(2) of the Act the tenants are entitled to deduct \$100.00 from one future month's rent on a one time basis.

Conclusion

The tenants' application to cancel the One Month Notice is granted. The tenancy shall 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: October 31, 2022

Residential Tenancy Branch