



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, MNRT, RR, FFT

Introduction

On July 17, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Sections 33 and 67 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with L.S. attending as an advocate for the Tenant; however, none of the Respondents attended the hearing at any point during the 59-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that a separate Notice of Hearing package was served to each Respondent by registered mail on August 5, 2022 (the registered mail tracking numbers are noted on the first page of this Decision). She stated that the registered mail tracking histories indicated that two of these packages were returned to sender, but the package sent to Respondent R.P. was delivered.

Regarding this service, I must address the naming of the three Respondents on this Application. When reviewing the previous two Decisions, G.P. has been named on both, and the Tenant testified that she initiated the written tenancy agreement with this person, but he failed to provide a copy of the agreement to her. As such, I accept that G.P. was a Landlord/Respondent by definition of the *Act*.

Furthermore, R.P. was also named as a Respondent on the August 29, 2022 Decision, and the Tenant testified that this person was the owner of the rental unit and that this

person started collecting rent from her in November 2021, instead of it being paid to G.P. From this, I can reasonably infer that R.P. would be considered a Landlord/Respondent by definition of the *Act*.

Finally, I note that S.P. has identified themselves as the Landlord on the Notice. As such, I am satisfied that all three persons have been correctly named as Respondents to this proceeding.

Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that R.P. was duly served the Notice of Hearing package, and that the other two Respondents were deemed to have received these packages five days after they were mailed.

L.S. advised that the Tenant's Amendment and evidence package was sent to Respondent S.P., on September 9, 2022, to the service address noted on the Notice, and that this was served by registered mail (the registered mail tracking number is noted on the first page of this Decision). A proof of service form was submitted to confirm that this package was delivered on September 12, 2022. Based on this undisputed evidence, I am satisfied that S.P. has been duly served the Amendment and the Tenant's evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on June 1, 2021, and that she signed the tenancy agreement with G.P.; however, she reiterated that he never provided her with a copy of this agreement contrary to Section 13 of the *Act*. She testified that rent was currently established at \$1,300.00 per month and that it was due on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$850.00 were also paid, but this illegal overpayment of the pet damage deposit was addressed in a previous Decision dated February 17, 2022 (the relevant file number is noted on the first page of this Decision). This Decision was submitted as documentary evidence for consideration.

She testified that due to G.P.'s hostility and mismanagement of the monies related to the rental unit, his mother, R.P. took over management of the rental unit and requested that the Tenant pay her the rent, as of November 2021. She stated that R.P. was the owner of the rental unit and that she paid rent to R.P. from this date forward. Given that she was not provided with a copy of the tenancy agreement, she was unsure of who her actual Landlord was.

She then submitted that the Notice was served to her by registered mail and that she received this on July 7, 2022. Respondent S.P. listed themselves as the Landlord on the Notice. The reason that was checked off on this Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent of that individual's spouse.)" As well, the box indicating that "The landlord or the landlord's spouse" would be the persons occupying the rental unit was checked off. The effective end date of the tenancy was noted as September 1, 2022, on the Notice. A copy of this Notice was provided as documentary evidence for consideration.

I find it important to note that the burden of proof is on the Landlords to substantiate the reasons for ending the tenancy. As the Landlords did not attend the hearing or provide evidence to justify why the Notice was served, I am not satisfied that the Landlords have established any grounds to substantiate service of the Notice. In addition, the Tenant submitted substantial documentary evidence to support a finding that the Notice was not served in good faith. Therefore, I find that the Notice dated June 28, 2022, is cancelled and of no force and effect.

Given that the hearing was scheduled for an hour, and that minimal hearing time had been allocated to the consideration of the Notice, I determined that it was appropriate to address some of the other claims in the Tenant's Application. In reviewing the Tenant's Monetary Order Worksheet, the seventh head of claim was a request for compensation in the amount of one month's rent based on the Notice. However, as the Notice was not valid, this claim has been dismissed without leave to reapply.

In the Tenant's ninth head of claim, the Tenant was seeking compensation in the amount of \$64.90 for the cost of having to change the locks. However, in the Decision dated August 29, 2022 (the relevant file number is noted on the first page of this Decision, and this Decision was submitted as documentary evidence for consideration), the Arbitrator determined the following:

I have reviewed the testimony and evidence and I find the escalation in G.P.'s threatening behaviour is troubling and problematic. I accept the undisputed testimony and evidence on this matter, and I find the Landlord has a blatant disregard for the Tenant's rights under the Act. Specifically, I find the G.P. violated section 29(1) of the Act when he entered the rental unit in the middle of the night, threatening the Tenant, and her dog. I find this shows a blatant disregard for the Act, and the Tenant's wellbeing. Further, the Tenant explained that G.P. has a restraining/no contact order against him, and has since March 2022. However, she continues to see him on the property, and has had to involve police on numerous occasions. Ultimately, pursuant to section 70(1) of the Act, I find it appropriate to set conditions on G.P.'s right to enter the rental unit. I Order that G.P. not enter the rental unit, as long as there is an active no contact/restraining order in place, for any reason. Should G.P. require access to the rental unit for tenancy related matters, he must appoint an agent to conduct lawful inspections on his behalf. G.P. must provide the Tenant with the name of any agent, prior to an inspection and any inspection must still comply with the requirements under section 29 of the Act

Further, with respect to the Tenant's request to change the locks, and pursuant to section 70(2) of the Act, I authorize and Order that the Tenant may re-key/change the locks on the entryway doors to the rental unit. The Tenant must pay for this but she may

deduct the expense of doing so from the following month's rent. The Tenant must retain and provide a copy of the receipt to the Landlords (or agent of), for the lock change, prior to deducting the amount from rent. I prohibit the Landlord from replacing the locks. The Tenant is not required to provide a key to the Landlords, and any future inspections must be coordinated between the Landlord's agent, and the Tenant. The Landlord (agent of) must provide reasonable notice in accordance with the Act, and the Tenant must reasonably accommodate any potential inspection. I Order the Tenant to grant access upon receipt of a valid Notice of Entry, as laid out above.

Given that the Arbitrator permitted the Tenant to change the locks and then withhold the corresponding cost of doing so provided that she first delivers a copy of this receipt to the Landlords, I am satisfied that the Tenant has already been awarded this amount. As such, I dismiss this claim without leave to reapply as the Tenant can simply follow the directions in the previous Decision to make herself whole for this matter.

With respect to the Tenant's fifth head of claim in the amount of **\$379.56** for the cost of the repair of a fridge, the Tenant advised that the Landlords were ordered to repair the fridge in the February 17, 2022 Decision, and that she texted a copy of this Decision to R.P. However, the Landlords have ignored the Orders in this Decision and have not made any attempts to comply with any of those Orders. In fact, after this Decision was rendered, G.P. became increasingly more hostile and abusive, as evidenced by the August 29, 2022 Decision where the Arbitrator outlined that "the situation has escalated, and G.P. has started physically threatening her and her dog, and threatening to kill both of them." Furthermore, the following was additionally noted in that August 29, 2022 Decision:

The Tenant stated that G.P. entered her unit and threatened to slit her dogs throat and to cause the Tenant physical harm. The Tenant stated that she filed a police report immediately and obtained a restraining order against G.P. A copy was provided into evidence. The Tenant also provided copies of the text messages from G.P. showing he was threatening her with violence and hostility. The Tenant stated that G.P. has breached his restraining order twice and still comes onto the property. The Tenant fears for her safety and requests that she be given permission to change the locks on the rental unit to prevent G.P. from entering, given their history. The Tenant stated that she has lost work as she feels she cannot leave the rental unit for fear that her dog will be killed.

The Tenant submitted documentary evidence to support her position that G.P. has been charged twice with a Breach of Undertaking, and charged once for Criminal Harassment. She advised that as the Landlords did not comply with the February 17,

2022 Decision to repair the fridge, she eventually paid for this herself, and she referenced a receipt submitted as documentary evidence.

There was enough time left in the hearing to address one more claim, and the Tenant was permitted to make submissions with respect to the sixth head of claim. She advised that she was seeking compensation in the amount **\$157.00** for the cost of a toilet repair that the Landlords were Ordered to rectify in the February 17, 2022 Decision. However, as noted above, the Landlords took no steps to comply with this Decision. She advised that the actual repair cost \$373.17 in total, but she did not serve the copy of this invoice to the Landlords until the day before the hearing. As this documentary evidence was not served to the Landlords in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this claim has been dismissed with leave to reapply.

As there was not enough remaining hearing time to address all of the other heads of claim in the Tenant's Monetary Order worksheet, those that have not been addressed above are also dismissed with leave to reapply.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit where the Landlords or a close family member of the Landlords intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords; give the address of the rental unit; state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

However, as noted above, the burden of proof lies on the Landlords, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlords are permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit. Given that the Landlords did not attend the hearing or provide evidence to justify why

the Notice was served, and given the substantial documentary evidence submitted by the Tenant to support a finding that the Notice was clearly not served in good faith, I am satisfied that the Notice dated June 28, 2022, is cancelled and of no force and effect.

With respect to the Tenant's claims for monetary compensation, Section 67 of the *Act* allows for compensation to be awarded should there be a breach of the *Act*. In addition, when establishing if an award for monetary compensation is warranted, Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, it is clearly evident that the actions and behaviours of G.P. are disturbing to say the least, and beyond exceedingly egregious. This is well documented in the previous Decisions, and it was noted as far back as the February 17, 2022 Decision that the Tenant could file a complaint against the Landlords with the Compliance and Enforcement Unit of the Residential Tenancy Branch if the Landlords did not comply with any of the Orders granted.

There is no dispute that the Landlords were Ordered to correct their behaviours and to rectify deficiencies in the rental unit; however, the consistent and undisputed evidence is that they have failed to comply with any of those Orders. Furthermore, the behaviours of G.P. have escalated to the point that he is clearly, likely engaging in criminal behaviour. Moreover, as opposed to taking any action to comply with what the Landlords were Ordered to do, it is abundantly evident, in my view, that the only manner

with which they have chosen to address these matters is by issuing a blatantly invalid Notice instead.

As it is unmistakeably obvious that the Landlords have taken no steps to comply with the Orders in the February 17, 2022 Decision, and as there is no doubt in my mind that they attempted to falsely and duplicitously end the tenancy in an attempt to avoid fulfilling their obligations as Ordered, I am satisfied that they will continue to flout and ignore their responsibilities as Landlords. Consequently, I find it appropriate to grant the Tenant a monetary award in the amount of **\$379.56** for the cost to repair the fridge that the Landlords were Ordered to fix.

Regarding the other claims for compensation, as noted above, the heads of claim numbered seven and nine have been dismissed without leave to reapply. However, the heads of claim numbered one to four, six, and eight have all been dismissed with leave to reapply.

As an aside, I find it important to emphasize that the Landlords are cautioned from continuing the deplorable and inexcusable manner with which they are managing this rental unit. They are warned that the Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain circumstances. The Tenant has been reminded that she can contact the Residential Tenancy Branch to inquire about initiating an investigation by the Compliance and Enforcement Unit should she believe that the Landlords are continuing to ignore Orders and attempting to circumvent the *Act*.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a monetary award as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenant

Item	Amount
Fridge repair	\$379.56

Recovery of Filing Fee	\$100.00
Total Monetary Award	\$479.56

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 6, 2022, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

In addition, the Tenant's claims for monetary compensation are allowed in part, and the Tenant has been granted a monetary award in the amount of **\$479.56**. Under the offsetting provisions of Sections 67 and 72 of the *Act*, **I allow the Tenant to withhold this amount from the next month's rent** in satisfaction of these claims.

Furthermore, as noted above, the heads of claim numbered seven and nine have been dismissed without leave to reapply. However, the heads of claim numbered one to four, six, and eight have all been dismissed with leave to reapply.

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 2, 2022

Residential Tenancy Branch