



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, CNL, LRE, LAT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants May 25, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the “One Month Notice”)
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10 Day Notice”)
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the “Two Month Notice”)
- To suspend or set conditions on the Landlords’ right to enter the rental unit
- For authorization to change the locks to the rental unit
- To recover the filing fee

The Tenants appeared at the hearing. The Landlords appeared at the hearing with Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlords withdrew the Two Month Notice and the Tenants agreed to this withdrawal.

Pursuant to rule 2.3 of the Rules, I told the Tenants at the outset of the hearing that I would consider the dispute of the 10 Day Notice, dispute of the One Month Notice and request to recover the filing fee and dismiss the remaining requests because they are not sufficiently related to the dispute of the 10 Day Notice and One Month Notice. The

remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the Residential Tenancy Act (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel confirmed receipt of the hearing package and raised no issue with service. Legal Counsel advised they received three packages of evidence from the Tenants, the latest two on September 27, 2022, and the date of the hearing. Legal Counsel took issue with the timing of these two packages. I found the Tenants failed to comply with rule 3.14 of the Rules in relation to the timing of service. I heard the parties on whether the evidence should be admitted or excluded. Pursuant to rule 3.17 of the Rules, I excluded the two packages of late evidence as I found it would be unfair to the Landlords to consider these when they had not had a chance to review or respond to them.

The Tenants confirmed receipt of the Landlords’ evidence and confirmed there were no issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Should the One Month Notice be cancelled?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The parties agreed the tenancy agreement was the original agreement between them and that it has been extended over time. The tenancy started January 01, 2018. Rent is due on the first day of each month.

10 Day Notice

The 10 Day Notice was submitted. The grounds for the 10 Day Notice are that the Tenants failed to pay \$1,388.00 in utilities due following written demand on February 10, 2022.

The parties agreed the 10 Day Notice was served on, and received by, legal counsel for the Tenants May 25, 2022.

Legal Counsel advised that there were three demands sent to the Tenants about utilities owing as shown in the 10 Day Notice. Legal Counsel advised that the first demand was sent in January, the second in February and the third to legal counsel for the Tenants with the 10 Day Notice. The Landlords testified about the three demands sent. The Landlords did not provide documentary evidence regarding the first demand. The Landlords provided pages 10 to 12 of their evidence package regarding the second demand.

The Tenants testified that they did not get utility bills from the Landlords. The Tenants testified that they did not receive anything from the Landlords in January regarding utilities. The Tenants disputed that the Landlords sent utility bills or a demand letter to the Tenants in February.

One Month Notice

The One Month Notice was submitted. The grounds for the One Month Notice are:

1. Tenant or a person permitted on the property by the Tenant has
 - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
2. Breach of a material term

The Details of Cause section of the One Month Notice states:

<p>Details of the Event(s):</p> <p>On or before February 2022, the Tenants changed the locks to the unit without the Landlords' authorization or consent.</p> <p>Between February and May 2022, the Landlords have informally requested the locks to be changed back.</p> <p>On or about May 18, 2022, the Landlords formally demanded that the locks be changed back in writing.</p> <p>On or about May 19, 2022, the Tenants' lawyer informed the Landlords that the locks had not been changed.</p> <p>On or about May 20, 2022, the Landlords attended the unit and confirmed that the key did not work. At the same time, one of the Tenants exited the unit and confirmed that they had changed the locks.</p> <p>The tenants have also denied the landlords entry on numerous occasions from conducting inspections, each time becoming uncooperative and belligerent.</p>

The parties agreed the One Month Notice was sent to, and received by, the Tenants May 25, 2022.

In relation to the Tenants changing the locks to the rental unit, the Landlords and Legal Counsel said the Tenants changed the locks and have not changed them back. Legal Counsel advised the Landlords found out the Tenants changed the locks in February of 2022. The Landlords testified that there are two doors to the rental unit, they checked the main entrance door and the locks had been changed. The Landlords relied on video evidence, written submissions and a letter to the Tenants in which the Landlords ask the Tenants to change the locks back.

The Tenants testified that there are four doors to the rental unit as shown in the videos they submitted. The Tenants submitted that their video evidence shows the Landlords' key does work in the locks of the rental unit. The Tenants testified that they responded to the Landlords' letter about changing the locks advising the Landlords they never changed them. The Tenants testified that the key must be turned forcefully to open the door. The Tenants relied on their video evidence. The Tenants referred to a previous RTB Decision on File 042.

In relation to denying entry, Legal Counsel referred to a table in Schedule A of their written submissions. The table shows the following:

- The Tenants denied entry February 16, 2022, and the parties agreed to the Landlords entering February 21, 2022
- The Tenants denied entry February 21, 2022
- Landlords entered the rental unit March 22, 2022, until the Tenants became confrontational
- Tenants denied entry May 20, 2022

Legal Counsel submitted that the Tenants have denied entry as outlined in the table despite being served proper notice of entry by the Landlords. Legal Counsel submitted that the Tenants are interfering with the Landlords' right to maintain the rental unit. The Landlords provided testimony about the Tenants denying them entry. The Landlords relied on two written witness statements about the Tenants denying entry to the rental unit.

The Tenants testified as follows. The Landlords do not give them options of days to attend and enter the rental unit. The Tenants have told the Landlords not to come to the rental unit on days the Landlords did attend. The Tenants were away February 16, 2022, and agreed to the Landlords coming back February 21, 2022; however, Tenant M.P. was randomly selected for COVID-19 testing and could not let people into the house pursuant to COVID-19 protocols. The Tenants did not submit a copy of the protocols they relied on. The Tenants received a notice of inspection for May 20, 2022; however, the Tenants asked that the inspection be delayed. The Landlords appeared on May 20, 2022 anyway and the Tenants denied them entry. The Tenants could not point to a legal basis for denying the Landlords entry May 20, 2022.

Both parties submitted evidence which I will refer to below as necessary.

Analysis

10 Day Notice

Section 46 of the Act allows landlords to end a tenancy when tenants fail to pay rent or utilities. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice...

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days **after the tenant is given a written demand for payment** of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. (emphasis added)

Legal Counsel submitted that three demands were sent to the Tenants about utilities; however, the third demand was sent with the 10 Day Notice and therefore is not sufficient to trigger section 46(6) of the Act.

Legal Counsel and the Landlords stated that utility bills and demand letters were sent to the Tenants in January and February; however, the Tenants disputed this.

Pursuant to rule 6.6 of the Rules, the Landlords have the onus to prove the grounds for the 10 Day Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Given the conflicting positions about utility bills and demand letters, I have considered the documentary evidence before me to support each position. There is no documentary evidence before me to support that utility bills and a demand letter were sent to the Tenants in January and therefore, I am not satisfied the Landlords have proven this. The only documentary evidence before me to support the Landlords' position about utility bills and a demand letter being sent in February is an Xpresspost package and Canada Post tracking information. There is no documentary evidence showing what was in the package which I find odd because this would have been simple evidence to produce. In the absence of further documentary evidence, I am not satisfied the Landlords have proven that utility bills and a demand letter were sent to the Tenants in February.

Given I am not satisfied the Landlords have proven that utility bills and written demands were sent to the Tenants prior to the 10 Day Notice being issued, I am not satisfied section 46(6) of the Act was triggered and am not satisfied the Landlords were permitted to serve the 10 Day Notice. The 10 Day Notice is cancelled.

One Month Notice

The One Month Notice was issued pursuant to section 47(1) of the Act.

The Tenants had 10 days from receipt of the One Month Notice to dispute it pursuant to section 47(4) of the Act. The Tenants received the One Month Notice May 25, 2022, and filed the Application May 25, 2022, within time.

As stated above, the Landlords have the onus to prove the grounds for the One Month Notice.

In relation to the Tenants changing the locks to the rental unit, I find it more likely than not that the Tenants did change the locks. The most compelling evidence in relation to this issue are the videos submitted by the parties. I find the Landlords' video does show that the Landlords cannot unlock the front door with their key because Landlord S.M. tries their key in the door and it does not unlock the door. The Tenants' videos simply show that the Tenants have keys to get into the rental unit, they do not show that the Landlords' key opens the locks to the rental unit. Further, the Tenants attempted to argue that the key must be forcefully turned and this is why the Landlords' key did not open the door; however, the Tenants' video shows the key does not need to be forcefully turned to open the door.

In relation to the Tenants denying entry, I accept that they did so February 21, 2022, and May 20, 2022, because the Tenants acknowledged this. I am not satisfied the Tenants had any reasonable basis for denying entry. I note that the Tenants have not submitted anything showing they were not allowed to let people into their house pursuant to COVID-10 protocols on February 21, 2022. Further, the Tenants seem to think it is up to them when the Landlords attend and enter the rental unit, which is not the case. If the Tenants agreed to entry or the Landlords served proper notice of entry, the Landlords can enter the rental unit pursuant to section 29 of the Act. It was not open to the Tenants to deny entry simply because they did not want the Landlords to enter the rental unit.

The One Month Notice also states that the Tenants have denied entry and become uncooperative and belligerent about this issue. I accept that this is the case because videos from both parties show Tenant M.P. being uncooperative and belligerent when the Landlords attempt to enter the rental unit May 20, 2022, despite the Landlords having a right to do so pursuant to section 29 of the Act. I note that nobody else was

acting inappropriately in the way Tenant M.P. was, in particular, the Landlords were not acting inappropriately.

Given the above, I am satisfied the Tenants have significantly interfered with the Landlords and seriously jeopardized the lawful right of the Landlords by changing the locks to the rental unit, denying entry when the Landlords had a right to enter and being uncooperative and belligerent in their dealings with the Landlords despite the Landlords having the right to be at the rental unit and entering the rental unit. I am satisfied the Landlords had grounds to issue the One Month Notice.

I have reviewed the One Month Notice and find it complies with section 52 in form and content as required by section 47(3) of the Act.

Given the above, I dismiss the Tenants' dispute of the One Month Notice.

Section 55(1) of the Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Given the above, the Landlords are entitled to an Order of Possession based on the One Month Notice pursuant to section 55(1) of the Act and are issued an Order of Possession effective two days after service on the Tenants as requested by Legal Counsel at the hearing.

The Tenants are not awarded the filing fee given they have not been successful in the Application.

Conclusion

The Landlords are issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 05, 2022

Residential Tenancy Branch