



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dole Enterprises Ltd.
and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC, MNDL-S, FFL
Tenant: CNC, CNL

Introduction

The Tenant filed an Application for Dispute Resolution on June 14, 2022 to dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”), and the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”).

The Landlords (hereinafter the “Landlord”) filed a cross-Application for Dispute Resolution on June 28, 2022 seeking an order of possession of the rental unit. They also seek compensation for damage in the rental unit, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 1, 2022. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – Tenant’s evidence

The Tenant stated the served the Notice of Dispute Resolution to the Landlord via registered mail. In the record appears the Tenant’s evidence to show this: a registered mail receipt and label showing the material sent on June 29, 2022. From this, I am satisfied the Tenant served the Notice of Dispute Resolution in relation to their Application to the Landlord in a timely manner.

Though the Tenant provided documents as evidence in this matter to the Residential Tenancy Branch, they did not serve this to the Landlord as required by the *Residential Tenancy Branch Rules of Procedure*. The Landlord confirmed they did not receive evidence from the Tenant in this matter. For this reason, I do not consider the Tenant's evidence in this matter; to do so would be prejudicial to the Landlord who did not receive it. The Tenant relied on testimony in the hearing.

The Landlord provided documents to the Tenant in relation to their Application. In the hearing the Tenant confirmed they receive this material.

Preliminary Matter – Two-Month Notice

The Tenant made this indication on the Application in error. The Landlord did not issue or serve a Two-Month Notice to the Tenant. I amend the Tenant's Application to withdraw this issue from this hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice, pursuant to s. 47 of the *Act*?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for damage in the rental unit, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord presented a copy of the tenancy agreement. The tenancy began on June 1, 2018. The rent amount was set at \$910 monthly, increased to \$970 over the course of the tenancy. The Landlord in their evidence pointed to s. 33 of this agreement, which shows a tenant must take the necessary steps to repair damage they caused by their own actions or neglect. Additionally, s. 45 of the agreement provides that the Tenant "will be responsible for

any loss, damage, or cost resulting from the tenant's failure to comply with any term of this Agreement . . .”

The Landlord presented a copy of the Condition Inspection Report to show there were no extant issues in the rental unit at the start of the tenancy, with both parties signing this document on May 31, 2018.

The Landlord provided a copy of the One-Month Notice, signed on June 13, 2022. This gave the final end-of-tenancy date as July 31, 2022.

On page 2 of the document the Landlord indicated the following reasons:

- Tenant or person permitted on the property by the Tenant has:
 - put the Landlord's property at significant risk
- Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park

The Landlord provided details on page 2:

Feb 22/2022 during a general building inspection we found a note in the bathroom saying [the Tenant's] toilet was not flushing properly. The stack was snaked and a plumber cleared the problem. [The Tenant] came and complained again. We called in [plumber/contractor]. They attended on Mar 28/22 removed and reinstalled the toilet. [The Tenant] complained again. [The plumber/contractor] attended on May 12/22 with camera equipment that showed foreign object 'a tube'. [The plumber/contractor] returned May 17/22 to remove the toilet and break it open to find out what was stuck inside – a plastic tube with non biodegradable sanitary wipe.

The Landlord provided a summary document describing the events as briefly set out on the One-Month Notice. This includes the additional points, as re-stated by the Landlord in the hearing:

- the Tenant described the toilet not working properly after the Landlord's inspection of February 22, 2022
- the toilet has been serviced over the years, being original to the building, with “all the mechanical components replaced as needed”
- The Landlord hired certified plumbers to determine if there is a repair or replacement warranted.

- The toilet was removed on March 28, 2022, with a drain augur implemented to make sure there was no obstruction in the sewer pipe. On that date, “the original toilet was re-installed as the toilet itself was functioning properly” according to the hired contractor.
- On May 12, the Landlord visited and found the sink faucet loose, with nuts broken off and the finish to the sink chipped. The Landlord found the toilet to be plugged. When the contractor visited, a camera was utilized to show some sort of tube stuck in the toilet. They made the decision to replace the toilet instead of spending hours trying to remove the tube, fearing sewer backup to other apartments.
- The Tenant, when showed the image from the camera, did not take responsibility as required by s. 32(3) of the *Act* and s. 33 of the tenancy agreement.
- The contractor returned on May 17, 2022 to replace the toilet. After breaking the toilet open after removal, the contractor discovered what was clogging the toilet: a tube with plastic wipes wrapped around, making the clog look intentional.
- The Landlord concluded that the Tenant placed foreign objects in the toilet causing it to plug. The Tenant had multiple opportunities to mention this to the Landlord when complaining of the malfunctioning toilet.
- The Landlord provided a letter to the Tenant on May 25, 2022, requesting the amount of \$1,412.16 for the three contractor visits for this problem. The Tenant did not contact the Landlord about this.
- The Landlord followed up with a final letter and the One-Month Notice on June 13, 2022 because of no response from the Tenant.

In the hearing, the Landlord cited the two primary reasons they seek to end the tenancy: items must not be flushed for which the Tenant was aware, and the Tenant was not here willing to pay for it.

In response to the Landlord’s evidence and what they heard in the hearing, the Tenant maintained they mentioned the problem with the toilet flushing in the past. The Landlord had visited to perform “rudimentary work” on the toilet, and the Tenant had to use a plunger at times. They stated that they did not flush material down the toilet in order to break the toilet. They speculated that other plumbing within the rental unit, such as the bathroom sink, was well over 40 years old.

The Landlord reiterated their concern that the Tenant was not reporting properly on issues. In response to the Tenant charging that the toilet was malfunctioning since the start of the tenancy, the Landlord responded to say there was no way that foreign material would remain in the toilet for more than 5 years.

Analysis

The *Act* s. 47 sets out the reasons for which a Landlord may give a One-Month Notice. This includes the reasons indicated on that document served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord provided all related correspondence in this matter and spoke to the reasons in their oral testimony. On my evaluation of this evidence, and with consideration to the submissions of the Tenant here, I find the One-Month Notice is not valid.

I am not satisfied the Tenant caused extraordinary damage in the rental unit. Though it required several visits from a plumber and a contractor, the matter was a malfunctioning toilet. This was limited to one piece of plumbing within the rental unit and did not spread to other rental units in the building, as the Landlord feared may happen.

I am not satisfied the Tenant put the Landlord's property at significant risk. The Landlord mentioned the potential for damage or problems with the sewer lines throughout the building; however, I am not satisfied that was palpable concern, without evidence attesting to this from a plumber or certified contractor.

I understand the Landlord is dealing with a problem ostensibly caused intentionally by the Tenant here. I find there is no evidence of a continued pattern of this behaviour. I concede this is a significant piece of damage within the rental unit; however, I find it was not extraordinary and limited in scope.

I find the Tenant is responsible for the damage; however, it is not significant enough, nor indicative of a pattern of damage, to end the tenancy.

I find the agreement provides for a tenant's responsibility for damage of this nature. I grant the Landlord full replacement cost of the toilet from the Tenant, with reference to the s. 33 and s. 45 in the tenancy agreement, and s. 32(3) of the *Act*. I grant a monetary order for the full amount of contractor/plumber visits; this amount is \$1,412.16 as shown in the Landlord's evidence.

I strongly caution the Tenant that any incidents of further damage in the rental unit will in all likelihood show a pattern to have developed over the course of this tenancy. This decision serves as a record of the Tenant's actions causing damage in the rental unit. The Landlord is well within their rights to attempt to end the tenancy for similar incidents in the future.

For the reasons set out above, I order the One Month Notice to be cancelled. The tenancy shall continue.

I find the Landlord was successful in this Application. I find they are entitled to recover the \$100 filing fee they paid for their Application. This amount is added to the monetary order.

Conclusion

For the reasons outlined above, I order the One-Month Notice issued on June 13, 2022 is cancelled and the tenancy remains in full force and effect. I dismiss the Landlord's Application for an Order of Possession for this reason.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the above terms, in the amount of \$1,512.16 for damage in the rental unit, and the Application filing fee. I provide the Landlord with this Monetary Order and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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

Dated: November 14, 2022

Residential Tenancy Branch