



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE, OLC, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to serve documents or evidence in a different way than required by the Act pursuant to section 71;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. The landlord attended the hearing and was represented by her daughter ("**PG**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

PG stated that the landlord did not receive some of the tenants' documentary evidence until December 6, 2022. She (correctly) stated that this was outside the allowed time to submit evidence. Despite this, she stated that she did not object to the documents being admitted into evidence. She received the notice of dispute resolution proceeding package inside the permitted time frame. The tenants stated that they received the landlord's evidence package within the permitted time frame. Accordingly, I deem all parties have been served in accordance with the Act.

Preliminary Issue – Severing of Claim

There was insufficient time to deal with all parts of the tenants' application at the hearing. The parties made submissions on the validity of the Notice and whether the landlord could block the ventilation ducts of the rental unit. The other issues raised by the tenants were not directly related to these two issues.

Accordingly, per Rule of Procedure 2.3, I dismissed the tenants' application to restrict the landlord's access to the rental unit and for the landlord to comply with Act in other ways, with leave to reapply.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) an order that the landlord comply with the Act; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a roughly 400 square foot basement suite located on the lower level of a semi-detached house. The landlord and her family live on the upper level. The lower level contains two suite (one of which is the tenants' rental unit) and a room where the landlord's parents reside. The parties entered into a written tenancy agreement starting August 1, 2022. Monthly rent is \$1,800 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$900, which the landlord continues to hold in trust for the tenants.

The rental unit has three smoke detectors, two in the kitchen located in main living area (one of these is a also a carbon monoxide detector) and one in the tenants' bedroom.

The landlord called a general contractor who had been in the rental unit. He testified that all three detectors are designed to be "hardwired" into the house's detection system and that they all have batteries as power backups which last between one and two years. He testified that if a detector sounds its alarm in one area of the house, all other alarms that are hardwired will also sound their alarms. If an alarm is not hardwired when its alarm is sounded, no other detectors will sound their alarms. He testified that he did not install the detectors, but rather they were installed by an electrician.

The landlord conducted an inspection of the rental unit on October 1, 2022, during which she discovered that the two detectors located in the main living area had been removed from the ceiling. PG testified that the wires connecting these detectors to the detector system could be seen hanging from the ceiling. PG testified that the rental unit was not adequately cleaned during the inspection.

The landlord gave the tenant a written warning later that night, Which mainly related to the condition of the rental unit. However it also stated the following:

The property is not in a fire safe condition as the fire alarms have been removed without permission.

The property is not in a fire safe condition as there is spills all over the stove.

The warning letter also stated that the landlord would conduct a follow up walkthrough in 24 hours time in 24 hours time.

PG testified that the following day tenant in a centre a text message which stated that the fire alarms were re installed and in working condition. The landlord returned to the rental unit the next evening. She testified that the detectors in the main living area were reinstalled on the ceiling, but they were "not plugged in as the green light was not on". PG remove the detectors from the ceiling and saw that the wiring had not been reconnected, but rather had been tucked into the ceiling. Additionally, the batteries had been removed from both detectors.

The landlord was unable to open the battery cover on one of the detectors, so she retrieved a new smoke detector from upstairs, put batteries in it, connected it to wires, and secured it to the ceiling. She also connected the other detector to the ceiling wires.

The landlord noted that both of the detectors displayed a green light, which indicates that they were on and functioning properly.

The landlord left the rental unit. The following day (October 3, 2022), she served the tenants with the Notice. It specified an effective date of November 30, 2022. It listed the reason for ending the tenancy as:

- Tenant or person permitted on the property by the tenant has:
 - o seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - o put the landlords property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord listed the details of the cause for the issuing of the notice as the tenants disconnection of the smoke detectors and failure to reconnect them after receiving a formal caution.

The tenants disputed the notice on October 10, 2022.

AI testified that he disconnected the detectors in the main living area when he was cooking, due to the poor ventilation in the rental unit. He testified that the fan over the stovetop is does not adequately ventilate, and that the detectors are between the stove and the window which he opens when cooking. He testified that the landlords shut all of the ceiling air vents in the rental unit when the tenants moved in, which further reduced the ventilation in the rental unit.

AI testified that the local municipal bylaws do not permit the landlord to close the vents in the rental unit. He testified that he advise the landlord of this, and that she agreed that the bylaws did not allow the vents to be blocked and agreed to open them up. AI

testified that the vents remain open, and that ventilation in the rental unit is no longer an issue. He testified that the tenants have not removed or disconnected the detectors since receiving the Notice, and that there have not been any alarms since.

The landlord disagreed. She testified that the alarm had gone off 4 or 5 times since the Notice was issued. She also testified that she attended the rental unit on November 18, 2022 and noticed that the green light on one of the living area detectors was off, which she said indicates that the tenants have disconnected the detector. She submitted a photo of the detector which appears to show that the light is off. AI testified that the light on that detector blinks, and that the photo must have been taken in between the blinks.

Analysis

1. Order to Comply with the Act

The tenants seek an order that the landlord not block the vents, in compliance with the municipal bylaw. The Act does not give me the authority to enforce municipal bylaws. The Act is also silent as to ventilation requirements of a rental unit. Accordingly, I cannot grant the requested order. I dismiss this portion of the application, without leave to reapply.

If the tenants believe the landlord is in breach of a municipal bylaw, they must contact the municipality regarding the breach and enforcement.

2. Cancellation of the Notice

Section 47(1) of the Act, in part, states:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Branch (the “**RTB**”) Policy Guideline 8 states:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

I have reviewed the tenancy agreement and the addendum. There is no term explicitly relating to smoke or carbon monoxide detectors. Accordingly, I cannot find that the tenants breached a *material* term of the tenancy agreement by disconnecting them. If such a term was “so important” to the landlord that the tenants’ breach of it would warrant ending the tenancy, I would have expected it to be included among the terms of the tenancy agreement.

Additionally, I do not find any indication in the tenancy agreement or addendum that would cause more general terms, such as the tenants’ obligation to repair the rental unit were intended as “material” terms. Accordingly, I do not find that the tenants breached a material term of the tenancy agreement.

The parties agree that the tenants disconnected the detectors in the main living area. The parties agree that the landlord closed the vents in the rental unit. I find that by so doing, the ventilation in the rental unit was reduced.

I accept Al's testimony that the reason he disconnected the detectors was because the smoke caused by his cooking caused them to go off. I find it more likely than not that the fact the landlord required the vents to be closed contributed to the likelihood that the rental unit would become so smoky that the smoke detector would sound an alarm. Accordingly, I find that the landlord indirectly contributed to the tenants’ perceived need to remove the smoke detector during the tenancy.

In the circumstances, I do not find that the tenants’ conduct warrants an end to their tenancy. I do not find that the tenants’ temporary removal of the smoke detectors put the landlord’s property at significant risk or that it seriously jeopardized the health or safety or a lawful right or interest of the landlord. I find that they were removed only when the tenants were home, and that they were re-installed afterwards. I accept that the tenants did not hardwire the detectors when re-installing them. This caused them to function less effectively (by not notifying the other alarms). The window of time in which the detectors were not functioning to their full capacity was minimal.

I also accept the tenants’ evidence that they have not removed the detectors since receiving the Notice as the ventilation issue has been rectified and the need for them to remove the detectors has been eliminated.

I note that continued or prolonged removal of the detectors could pose a risk to the landlord’s or their property. In the circumstances, as the rental unit’s ventilation is no longer an issue, I find it appropriate to order that the tenants refrain from removing any of the detectors in the rental unit without prior written approval from the landlord.

I decline to order that the tenants may recover their filing fee from the landlord.

Conclusion

I dismiss the tenants' application for an order that the landlord comply with the Act, without leave to reapply.

I order that the Notice is cancelled and is of no force or effect. The tenancy shall continue.

Pursuant to section 62(3) of the Act, I order that the tenants refrain from removing any of the detectors in the rental unit without prior written approval from the landlord.

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: December 14, 2022

Residential Tenancy Branch