



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP LRE OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on December 6, 2022. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant stated he served his Notice of Dispute Resolution Proceeding and evidence package by registered courier (UPS), and sent it to the Landlord's residence. The Landlord confirmed her address in the hearing. The Tenant provided mail tracking information showing he sent the above noted package to the Landlord on July 28, 2022. Although the Landlord denied getting this package, pursuant to section 90 of the Act, I find the Landlord is deemed served with this package 5 days after it was mailed. Further, I note the Landlord was provided with a courtesy copy of the Notice of Dispute Resolution Proceeding document last month by the RTB.

The Tenant confirmed receipt of the Landlord's evidence package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenants' application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on July 7, 2022. The Notice indicates the following grounds for ending the tenancy.

Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- put the Landlord's property at significant risk.

Under the details of cause, the Landlord indicated the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. Wednesday July 6, 10:38 am I emailed the tenant that I will be walking exterior only on Thursday 1-2pm.
2. At 10:58 am the tenant [REDACTED] responds demanding that he needs to be there.
3. I provided him over 24 hours to walk exterior, I do not need permission, he is threatening me
4. I want to remove some bushes and clean up the front and he is refusing me to maintain my property
5. The tenant was short on the rent payment this month, he said he injured his back but demands that I hire him to clean the gutters and paint, which I have insured tradesmen.
6. I have allowed another vehicle to park on the front driveway that is not blocking anyone access
7. Please see attached chain of emails as Jason wants me to pay him two months rent and damage deposit [REDACTED] is Black mailing me to pay him money
8. [REDACTED] has not been doing the gardening on the property as he agreed to on the rental agreement.
9. This is my property and the other tenant is always very nice, but [REDACTED] seems to constantly harrass me and I will have to contact the POLICE.
10. I feel threatened by [REDACTED] as he "Significantly interferes with my decisions"
11. [REDACTED] states that he will hire a tow truck to remove anyone on the driveway, the driveway is so large, and there is lots of room for the vehicles I decide can park there. Both [REDACTED] and the other tenant have one parking spot each and their access will not be blocked by additional vehicles. I ask for tenant to leave.

The Landlord was asked to speak to why the Notice was issued, and she indicated that the Tenant moved in a couple of years ago, and there have been a variety of issues for quite some time. The Landlord briefly touched on issues relating to how the Tenant will "interfere" with other Tenants. She also briefly stated that she has given the Tenant reduced rent so that he will take care of the property, but she is not satisfied with his maintenance of the yard. The Landlord also took issue with the fact that the Tenant used to have a small car, and now he has a pickup truck, which takes up more space in the driveway.

The Landlord pointed to an incident on or around July 15, 2022, where she had allowed a friend to park in the driveway at the rental house, and the Tenant called a tow truck to have the vehicle removed when he came home from work and saw it parked in his spot. The Landlord stated that parking wouldn't be an issue if the Tenant had a normal sized car. The Landlord confirmed that there are two units in this house, and upper and a lower unit, both of which have one parking space included in rent.

Pictures of the driveway were provided into evidence, along with photos of the different vehicles being parked there.

A copy of the tenancy agreement was provided into evidence which shows the following:

3. RENT (please fill in the information in the spaces provided)

a) **Payment of Rent:**
 The tenant will pay the rent of \$ 1,900.00 each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period, which falls on the (due date, e.g., 1st, 2nd, 3rd, ..., 31st) 1st day of each (check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.
 The tenant must pay the rent on time. If the rent is late, the landlord may issue a *Notice to End Tenancy for Unpaid Rent* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input type="checkbox"/> Water	<input type="checkbox"/> Natural gas	<input type="checkbox"/> Garbage collection	<input type="checkbox"/> Refrigerator	<input type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input type="checkbox"/> Sewage disposal	<input type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Parking for <u>1</u> vehicles
<input type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input type="checkbox"/> Window coverings	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>

☐ Additional Information: tenant to have content insurance, utilities and gardening/painting/upkeep of unit not included

The Landlord indicated she is hoping to sell the home shortly. The Landlord also noted that there are two storage lockers in the rear of the property which the Tenant has prevented her from accessing. Although the Landlord stated she has never tried to access them. The Landlord also noted that the Tenant has hung a small boat on the neighbours fence, without their permission. The Landlord took issue with the fact that the Tenant asked for new smoke detectors, yet didn't pick them up from the hardware store for over a week. The Landlord stated she feels "threatened" by the Tenant. Although she did not elaborate and explain what specifically makes her feel threatened.

The Tenant acknowledged that he and the Landlord have not had a good relationship since 2019, when the Landlord initially had permitted someone to park in the shared driveway for 6 months. The Tenant stated that the driveway, which he shares with the lower unit, is two cars wide, and if more than two cars park in the driveway, then it means some of the cars get boxed in and are not able to come and go freely.

Regarding the July 15, 2022, incident, the Tenant stated that he came home from work and there was an SUV in his parking spot, and he was unable to determine who's car it was, so he called the tow company. Shortly after the tow truck arrived, the Landlord attended the house, and the parties had a disagreement about the vehicle. The Tenant stated that he only has the one vehicle, which is permitted under his tenancy agreement, and it is a normal pickup truck.

The Tenant stated that the Landlord had allowed him at the start of the tenancy to use the storage sheds, and to put his boat down beside the house. However, the Landlord is not creating issues because she is unhappy she is having trouble renting out extra parking space to third parties. The Tenant stated that the Landlord is persistent with her emails, and phone calls, and he feels harassed by the Landlord. The Tenant stated that

the Landlord has requested access to the rental property at least 4 times recently. However, the Landlord has not showed up, which is disruptive. The Tenant stated that he maintains the yard regularly, and it is in much better shape than when he arrived. The Tenant also stated he gets along well with the Tenant below him, and opined that the Landlord is creating issues where there is none.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the Act. I note the Tenant received the Notice on July 7, 2022, and applied to dispute it on July 12, 2022.

I have reviewed the evidence and testimony on this matter and I find the Landlord provided a scattered, unclear, and poorly substantiated explanation as to why she issued the Notice. I acknowledge that the parties have had a history of disagreements on a variety of issues, and that there is ongoing dysfunction. However, when asked to explain the main reasons why the Notice was issued, the Landlord hopped from one topic to the next, without properly explaining or substantiating any of the issues. I found the explanation of issues lacked depth and clarity, and was difficult to follow. I also note the Tenant refutes the Landlord's allegations. I also find there is a lack of clear and compelling evidence showing that the Tenant is threatening or disturbing the Landlord or other occupants, or putting the property at significant risk.

As per the tenancy agreement, the Tenant is allowed to park one vehicle. I do not find the Tenant is violating the tenancy agreement by parking what appears to be a normal sized pickup truck in the driveway.

Ultimately, I do not find the Landlord has sufficiently demonstrated and substantiated the reasons behind the Notice.

Given my findings on this matter, I find the Landlords have not established that there are sufficient grounds to end the tenancy. The Tenant's application is successful and

the Notice received by the Tenant on July 7, 2022, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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 7, 2022

Residential Tenancy Branch