



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KERR PROPERTIES 002 LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on September 29, 2022, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 21, 2022 (the "Notice"), an Order restricting the Landlord's right to enter the rental unit, and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 9:30 a.m. on November 28, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenants T.C. and J.M. called in on their own behalf and the Landlord was represented by N.D. the Property Manager.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named the property manager, N.D., as Landlord. A review of the tenancy agreement confirms the Landlord is a corporate entity. I therefore Amend the Tenant's Application to correctly name the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord's right to enter the rental unit be restricted?
3. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord confirmed that the tenancy began February 1, 2021. Rent is \$1,500.00 per month and the Tenant paid a \$750.00 security deposit and \$750.00 pet damage deposit.

The Landlord issued the Notice on September 21, 2022. A copy of the Notice was provided in evidence before me. The address on the Notice was incorrect and the Notice was not signed. For reasons which will be detailed in this my Decision I did not hear any further submissions with respect to the reasons the Landlord issued the Notice, nor did I hear any response from the Tenant in this regard.

In terms of the Tenant's request for an Order restricting the Landlord's right to enter the rental unit, the Tenant J.M. stated that they made this request as they want to change the locks on the rental unit and to stop the Landlord from entering the rental unit in any event. Again, for reasons which will be detailed further in this my Decision, I did not hear any further submissions or evidence with respect to this issue.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As noted, the Notice in this case was not signed and did not provide the correct address. As such, I find the Notice fails to comply with sections 52(a) and (b) of the *Act* and is therefore ineffective. **I therefore grant the Tenants' request for an Order canceling the Notice.** The tenancy shall continue until ended in accordance with the *Act*.

The Tenant seeks an Order permitting them to change the locks on the rental unit and denying the Landlord entry to the unit.

As discussed during the hearing, a tenant is entitled to quiet enjoyment of the rental unit in accordance with section 28 of the *Act* which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As noted in section 28(c), the tenants right to exclusive possession is subject to the landlord's right to enter the rental unit pursuant to section 29, which reads as follows:

Landlord's right to enter rental unit restricted

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i)the purpose for entering, which must be reasonable;
 - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d)the landlord has an order of the director authorizing the entry;
- (e)the tenant has abandoned the rental unit;
- (f)an emergency exists and the entry is necessary to protect life or property.

In addition to entry permitted by the tenant and an Arbitrator, the above ensures a landlord is able to preserve and protect the rental unit and others in the event of an emergency, or in the event the tenant jeopardizes the safety or integrity of the rental unit through misuse of abandonment.

In the case before me, the Tenants asked that I authorize them to change the locks on the rental unit and prevent the Landlord from entering the unit *at any time*. While a tenant may ask that the locks on a rental unit be changed to prevent entry by *third parties*, the tenant may not change the locks and deny the landlord entry to the rental unit as the landlord has the right to enter the unit pursuant to section 29. As such, **I dismiss the Tenants' request that I restrict the Landlord's right to enter the rental unit and their request that I permit them to change the locks and deny access to the rental unit.**

As the Tenants have been partially successful in their Application, **I grant their request for recovery of the filing fee.** Pursuant to section 72 of the *Act* I authorize them to reduce their next months' rent by \$100.00 as recovery of that fee.

Conclusion

The Notice fails to comply with section 52 of the *Act* and is therefore ineffective. The Tenants' request for an Order canceling the Notice is granted.

The Tenants request for an Order restricting the Landlord's right to enter the rental unit is dismissed without leave to reapply.

The Tenants request for recovery of the filing fee is granted. They may reduce their next months' rent by \$100.00 to recover this sum.

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 6, 2022

Residential Tenancy Branch