



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

On August 29, 2022, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated August 10, 2022, (“the One Month Notice”). The Tenants also applied for an order to suspend set conditions on the Landlords right of entry into the unit and to recover the filing fee for the Application.

The Tenants and the Landlord appeared at the hearing. The Tenants were assisted by an advocate and a social worker. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The only documentary evidence was provided by the Tenants who provided a copy of the One Month Notice. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The hearing proceeded for approximately two hours and was challenging due to late arrivals and regular interruptions from the Tenant Ms. I.B. who suffers from hearing loss. To be clear, I assess no blame towards Ms. I.B. for her frequent outbursts due to her medical condition; however, there were a couple of outbursts of foul language from the Tenants that were not appropriate and I gave a warning about inappropriate language.

At the start of the hearing the Tenants' advocate raised the issue of the Tenants receiving more time to dispute the One Month Notice. Section 66 of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances.

With respect to service of the One Month Notice, the Landlord provided affirmed testimony that he served the One Month Notice to the Tenant Ms. I.B. in person at the rental unit on August 10, 2022. The Landlord testified that he had a witness present when he went to serve the One Month Notice. The Landlord's witness Mr. S.F. testified that the Landlord approached him on August 10, 2022, and informed him that he was about to serve the One Month Notice to the Tenants. Mr. S.F. testified that he overheard the conversation of the Landlord serving the One Month Notice to the Ms. I.B.

The Tenants testified that they did not recall the date they received the One Month Notice but it was sometime in August 2022. The Tenant Ms. I.B. applied for dispute resolution to dispute the One Month Notice on August 29, 2022.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Landlord is opposed to the motion to allow the Tenants more time to dispute the One Month Notice.

The Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated on the application for dispute resolution. The Tenant's application and the Notice of Dispute Resolution Hearing do not contain a request for more time to make an application to dispute a notice to end tenancy. The Tenant indicated on the application that she was not filing after the 10-day dispute period.

Despite that the Tenant never applied for more time to dispute a notice to end tenancy, I invited the Tenants to explain any circumstances present which could convince me to permit the Tenants more time.

The Tenants advocate testified that the Tenants are in their 80's and are responsible for their own affairs and did their best to file as soon as possible.

The Tenants witness Ms. M.B testified that in the past year, the Ms. I.B's memory has been declining and they are lining up care for her.

A social worker Ms. L.G. stated that the Tenant struggles with memory and hearing loss.

I asked the Landlord questions of who pays the rent and who pays the bills such as cable, hydro, and phone. The response was that the Tenant Ms. I.B. pays the rent to the Landlord each month and also pays all the other monthly bills.

The parties were informed that I would withhold my decision on whether to permit more time and that the hearing would continue, in case I permitted the Tenants more time.

Issues to be Decided

- Should the Tenants be granted more time to dispute the One Month Notice?
- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties provided testimony agreeing that the tenancy began approximately three years ago and is on a month-to-month basis. Rent in the amount of \$950.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$450.00.

More Time to Dispute a Notice to End Tenancy

Section 47(5) of the Act is clear that a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

I accept the Landlord's testimony that the One Month Notice was served in person to Ms. I.B. on August 10, 2022. Due to the 10th day falling on a weekend, the Tenants had until August 22, 2022 to dispute the One Month Notice. I find that the Tenants disputed the One Month Notice on August 29, 2022. The Tenants dispute of the One Month Notice was 7 days late.

I have considered whether or not there are exceptional circumstances present that I should allow the Tenants more time to dispute the One Month Notice. Despite being prompted by the application to apply for more time, the Tenant never applied for more time to dispute a Notice. The Tenants application was late; and the Landlord opposes the motion to grant the Tenants more time.

I have considered the testimony that the Tenants have health conditions and Ms. I.B.'s memory is in decline. On the other hand, the Tenant remains responsible for her own affairs and pays the rent each month and has been responsible to pay the cable, hydro, and phone bills. After consideration of all the above, I find that the Tenants do not have exceptional circumstances and I deny the request to amend the application to allow more time to dispute the One Month Notice. The Tenants are conclusively presumed to have accepted that the tenancy ended on October 1, 2022, the effective date of the Notice.

Even if I had granted the Tenants more time to dispute the One Month Notice, I find that the Landlord provided sufficient evidence to establish that there is merit to the reasons within the Notice.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant is repeatedly late paying rent.

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

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *Put the Landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit/site property /park.

The Landlord testified that other occupants of the rental property have been complaining to the Landlord about being disturbed by noise coming from the Tenants. The Landlord stated that he does not wish to kick tenants out; however, they need assistance due to their state. He stated that the Tenants walk around the property inappropriately dressed and Ms. IB was harassing a neighbour. The Landlord stated there is constant noise from the Tenants yelling and screaming which also occurs during the night. The Landlord stated that he has received letters of complaint from occupants regarding the Tenants fighting and yelling. He testified that in response to the complaints he has spoken to the Tenants and that Mr. R.L. promised to keep the noise down but Ms. I.B. was confrontational with him.

The Tenant's advocate pointed out that the Landlord has not provided any documentary evidence to support that he received complaints or issued warnings to the Tenants.

The Landlord then had two occupants who reside in separate units at the residential property provide affirmed testimony about being disturbed by the Tenants.

Mr. S.F. testified that he has been disturbed by ongoing noise during the day and night, sometimes at 1:00; 2:00; 3:00; or 4:00 am. He testified that he has provided the Landlord with written complaints and also verbally every couple months about the disturbances.

Ms. M.S. testified that she lives below the Tenants and the arguments and tone of voice are horrible for her and triggers her PTSD. She stated that she has never heard people fight so much. She stated that she has a right to a quiet peaceful abode. She stated that she has provided written complaints to the Landlord a few months ago.

Analysis

While I acknowledge that the Landlord did not provide documentary evidence, I find the direct testimony of the Landlord and the testimony of his witnesses to be sufficient to establish that the Tenants have unreasonably disturbed other occupants of the residential property. The Landlord has a duty under the Act to protect the quiet peaceful enjoyment rights of all occupants of the property.

I find that there was sufficient reason for the Landlord to have issued the One Month Notice.

The Tenants are conclusively presumed to have accepted that the tenancy ended on October 1, 2022, the effective date of the Notice. The Tenants application is dismissed. Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the One Month Notice. Since the effective date of October 1, 2022, has passed by, the Landlord is granted an order of possession effective no later than 1:00 pm on February 1, 2023,

after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to dispute a One Month Notice to End Tenancy for Cause dated August 10, 2022, was made late and is dismissed. The Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice and they must vacate the rental unit.

The Landlord is granted an order of possession effective no later than 1:00 pm on February 1, 2023, after service on the Tenants.

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: January 18, 2023

Residential Tenancy Branch