



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MNDL-S, FFL
 Tenant: CNC, LRE, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on August 10, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated July 27, 2022 (the "One Month Notice");
- a monetary order requiring the Tenant to pay to repair damage;
- an order permitting the Landlord to retain the security deposit held in partial satisfaction of the monetary claim; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on August 10, 2022. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling the One Month Notice;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by PC and YZ. The Tenant attended the hearing and was accompanied by AN and PS. All in attendance provided a solemn affirmation.

On behalf of the Landlord, PC testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. No documentation was submitted in support and the Tenant denied receipt of any documents related to the Landlord's application. Therefore, I find there is insufficient evidence before me to conclude the Landlord served these documents on the Tenant in accordance with the Act. As a result, the evidence submitted by the Landlord has not been considered. Further, I find:

- The Landlord's request for an order of possession is dismissed without leave to reapply.
- The Landlord's claim for compensation is dismissed with leave to reapply.
- The Landlord's request to retain the security deposit is dismissed with leave to reapply.
- The Landlord's request to recover the filing fee is dismissed without leave to reapply.

On behalf of the Tenant, PS testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by ExpressPost on December 12, 2022. The Landlord acknowledged these documents were received. No issues with service or receipt of these documents were raised during the hearing. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The parties in attendance were provided with the opportunity to present evidence and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule of Procedure 2.3 permits arbitrators to exercise their discretion to dismiss unrelated claims with or without leave to reapply. In this case, I find the most pressing issue is whether the tenancy will continue. Therefore, I dismiss the Tenant's request for an order suspending or setting conditions on the Landlord's right to enter the rental unit with leave to reapply.

The Landlord's application is dismissed as described above.

Issues

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 15, 2020. Currently, rent of \$4,880.00 per month is due on the 15th day of each month. The Tenant paid a security deposit of \$2,400.00, which the Landlord holds.

The Landlord testified the One Month Notice was served on the Tenant by registered mail on July 29, 2022. Copies of Canada Post registered mail receipts showing the date and time of purchase and including the tracking number were submitted in support. The Tenant acknowledged receipt of the One Month Notice on August 4, 2022. The One Month Notice is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice was issued on the following bases:

- Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.
- Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property.
- Tenant has not done required repairs of damage to the unit or property.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On behalf of the Landlord, YZ testified that that the situation has come about over the last four months. YZ testified the iron entry gate and the stone wall to which it was mounted were damaged by the Tenant, who told them it was due to a car accident. PC testified the entry gate was repaired by the Tenant but that the repair was deficient. For example, PC testified that the motor which controls the gate has not been replaced. PC testified that the Landlord has obtained a quote for the repair but that the work has not been completed. YZ also described the Tenant's manner throughout as "rude" and "unbearable."

PC also described damage to the interior of the house. Specifically, PC testified the Tenant caused damage to the rental unit by improperly installing a curtain attached to the window frame, and by removing racks and hangers removed from the second bedroom closet.

In reply, PS acknowledged that in June 2022 the Tenant struck the entry gate and wall while backing a vehicle out of the driveway. PS testified that the wall on each side of the gate was damaged. PS testified that the Tenants repaired the damage at a cost of \$7,875.00 and submitted an invoice dated July 30, 2022 in support. The Tenant also submitted photographs of the repaired wall and gate.

In addition, PS stated that the oral testimony relating to the interior of the rental unit is based on differences in personal taste and style. However, PS submitted that if this constitutes damage the Landlord is protected with \$2,400.00 security deposit.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 47(1) of the Act confirms that a landlord may take steps to end a tenancy for the reasons indicated in the One Month Notice. Rule of Procedure 6.6 confirms that when a tenant applies to cancel a notice to end tenancy, the landlord must prove the reason they wish to end the tenancy on a balance of probabilities.

Did the Tenant put the Landlord's property at significant risk?

I find the Landlord has provided insufficient evidence to demonstrate that the Tenant put the Landlord's property at significant risk. Although I accept that a risk materialized when the Tenant damaged the entry gate and wall, I find the damage was localized and that the risk to the Landlord's property as a whole was not significant.

Did the Tenant cause extraordinary damage to the property?

I find the Landlord has provided insufficient evidence to demonstrate that damage to the property was “extraordinary” as contemplated under the Act. While I accept that the damage to the entry gate and wall was caused by the Tenant and was significant, I find the damage was not extraordinary. For example, the damage was not widespread and did not impact the ability of the Tenant to occupy the rental property. There was also no evidence before me that the damage impacted the value of the Landlord’s property or that it was incapable of repair by the Tenant.

I also find the Landlord has provided insufficient evidence to demonstrate that any damage to the interior of the rental property was extraordinary.

Did the Tenant fail to complete required repairs of damage to the property?

Section 32(3) of the Act confirms that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant. This is repeated in Policy Guideline #1 which states:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

I find the Landlord has provided insufficient evidence to demonstrate that the Tenant failed to complete required repairs of damage to the entry gate and wall. This finding is supported by an invoice for \$7,875.00 and photographs of the repaired entry gate and wall, submitted by the Tenant. Although the Landlord testified the repairs were deficient, this was not supported by documentary evidence. As noted above, the Landlord remains at liberty to reapply for compensation related to the damage.

With respect to the damage to the interior of the rental unit, I find the Landlord has provided insufficient evidence to demonstrate that the Tenant was required to complete repairs of interior damage inside the rental unit. I also agree with the submission of PS who stated that the Landlord is protected by a security deposit for damage as described by PC.

Did the Tenant breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so?

I find the Landlord has provided insufficient evidence to demonstrate that the Tenant breached a material term of the tenancy agreement. Indeed, I was not referred to any provision in the tenancy agreement that was breached by the Tenant.

Considering all the above, I find the Landlord has not provided sufficient evidence to uphold the One Month Notice. Therefore, I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant has been successful, I find the Tenant is entitled to recover the filing fee. I order that \$100.00 may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

The Landlord's application is dismissed as described above.

The Tenant's request for an order suspending or setting conditions on the Landlord's right to enter the rental unit is dismissed with leave to reapply.

The One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

The Tenant is entitled to recover the \$100.00 filing fee, which may be deducted from a future rent payment at the Tenant's discretion.

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 5, 2023

Residential Tenancy Branch