Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310066423: CNC, MNDCT, LRE, OLC, FFT
File #910069824: OPC, MNDCL, FFL

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on March 15, 2022 (the "One-Month Notice");
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 70 restricting the Landlord's right of entry;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

The Landlord files its own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the One-Month Notice;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

This matter was heard on July 4, 2022, November 4, 2022, and January 26, 2023. Interim reasons were issued with respect to the first two hearings, which were adjourned due to there being insufficient time to complete the hearing.

M.G. and L.B. appeared as the Tenants. The Tenants were represented by M.M. as their counsel. The Tenants also called T.L. as a witness. The Landlord was represented by K.L. as its counsel. J.R. also attended for the Landlord and is the building manager with respect to this tenancy.

The parties affirmed to tell the truth during the hearing and when they provided evidence. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Style of Cause

In their application, the Tenants name J.R. as the Landlord. I have been asked to amend the style of cause by Tenants' counsel to reflect the corporate Landlord as listed in its application, which coincides with the name of the Landlord as per the tenancy agreement.

Policy Guideline #43 provides guidance with respect to the naming of parties and indicates that the legal name of the parties ought to be used. In this instance, it is clear both based on the tenancy agreement and the Landlord's own application that J.R. is not the Landlord, the corporate entity is. Accordingly, I amend the style of cause to reflect the naming of the Landlord as listed in its own application.

Preliminary Issue – Parties' Claims

Both parties in this matter seek various relief in their applications. The primary issue in both applications is whether the tenancy will continue or end based on the One-Month Notice. Indeed, some of the claims sought by the Tenants are secondary to this issue as no order restricting entry or an order that the landlord comply would be issued if the tenancy comes to an end.

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to each other and, where they are not, unrelated claims may be dismissed with or without leave at the arbitrator's discretion. Given that the primary issue in this dispute is whether the One-Month Notice is enforceable, I sever the other claims in the parties' applications.

To be clear, the Tenants' claims under ss. 67 (Monetary compensation), 70 (Landlord's right entry), and 62 (Order that the Landlord comply) of the *Act* are severed from the application. Regardless of the outcome of this matter, the Tenants' claim under s. 67 is dismissed with leave to reapply. Depending on whether the tenancy ends or continues, the claims under s. 62 and 70 may be dismissed with or without leave to reapply.

Similarly, the Landlord's claim under s. 67 of the *Act* for monetary compensation is dismissed with leave to reapply.

The matter proceeded strictly on the issue of the enforceability of the One-Month Notice.

Issues to be Decided

1) Should the One-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order of possession?
3) Is either party entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

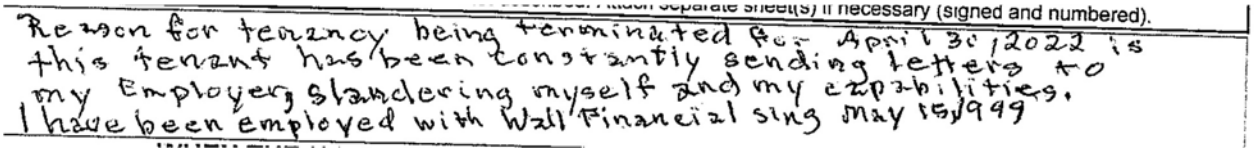
The parties confirmed the following aspects with respect to the tenancy:

- The Tenants moved into the rental unit on October 1, 2020.
- Rent of $1,674 is due on the first of each month.
- The Tenants paid a security deposit of $825.00 and a pet damage deposit of $400.00 to the Landlord.

As alluded to above, I have been given a copy of the tenancy agreement by the parties.

I am advised by the Landlord that the One-Month Notice was posted to the Tenants' door on March 15, 2022. The Tenants acknowledge receipt on the same date. A copy of the One-Month Notice was provided to me by the parties. The Landlord cites the cause for ending the tenancy as the Tenants, or someone permitted on the property by the

Tenants, have significantly interfered with or unreasonably disturbed another occupant or the landlord. The One-Month Notice provides the following details with respect to the cited cause:



I am advised by the parties that the One-Month Notice was also served with a letter dated March 15, 2022, a copy of which was provided to me by the Tenants. That letter provides the following description as explanation for ending the tenancy:

> In response to your concerns letter submitted 22/2/2022 suggesting [the Landlord] terminate my employment, as you feel I am incompetent, attacking my personality with a company I have been employed with for over 20 years. I care about my job and the tenants as well as their concerns.

I have redacted identifying information from the reproduction above in the interest of the parties' privacy. The letter of March 15, 2022 was authored and signed by J.R., the building's manager. In cross-examination, J.R. admits that she never gave a warning letter to the Tenants that their conduct may result in eviction prior to issuing the One-Month Notice.

Tenant's counsel raised technical deficiencies with the One-Month Notice. First, that it is in an older form for RTB-33 created in 2016. Second, that the Landlord is listed as J.R. and J.R. signed the One-Month Notice on her own behalf rather than as agent for the Landlord. It was argued that both deficiencies constitute a breach of s. 52 of the *Act* and that the notice ought not be enforced on that basis.

In the Landlord's evidence, J.R. provided testimony that she has been employed by the Landlord as the resident building manager since 1999 and that in all those years she has never had issues with a tenant as she has had with L.B.. J.R. indicates that she has been yelled at and berated by the L.B. and directs me to video to that effect in the Tenant's evidence. J.R. also directs me to a letter in evidence sent to her employer that is undated and is said to have been authored by L.B.. L.B. confirms in her testimony she authored the letter in question. J.R. further testified that she is 62 years old and that the stress of her interactions with the Tenant L.B. have caused her to consider quitting her job, sleeplessness, and prescriptions for anti-depressants and anti-anxiety medication.

Both J.R. and Landlord's counsel argue the letter from L.B. was an attempt by her to get J.R. fired. Counsel directs me to a portion of L.B.'s letter, which states the following:

> [J.R.] is simply not capable of doing her job. I would implore you to have someone who does so you stop losing long term and hard working tenants.

I have redacting personal identifying information from the reproduction above in the interest of the parties' privacy.

L.B. denies attempting to get J.R. fired and says all she wished for was to have various maintenance issues at the property addressed. L.B. in her testimony indicates that she has had ongoing issues with mice, mould within laundry room, and maintenance of the laundry machines. In an affidavit sworn by L.B., she says that the washing machines leaked water onto the floor and the dryer took 2 or 3 cycles to properly dry her clothes. L.B. further advised during the hearing that mice gained entry into her dog's food and her dog got sick. L.B. says that she raised these issues with J.R. and that the issues were largely ignored. L.B. says that it took pest control was brought into her rental unit one year after she first notified J.R. of the issue. L.B. further says that when she reported the laundry machine issues to J.R., she was told that she ought to contact the company contracted to maintain those machines herself and was accused of not knowing how to do laundry.

L.B. also says that J.R. has yelled at her, which J.R. denies saying she has a hearing aid and may speak more loudly as a result. At the hearing, L.B. reports anxiety from her interactions with the building manager. In her affidavit, L.B. claims to have contracted a parasite which she believes was caused by mice, though it is unclear from her affidavit how she formed the basis for that belief. L.B.'s affidavit includes a letter from her doctor detailing issues related to her health said to be caused by her living conditions at the apartment, though the letter appears to be based entirely on the information reported to the physician by L.B. herself.

Tenants' counsel directs me to a municipal inspection report of the residential property. L.B. testifies that the inspector attended the property after she made complaint to the municipality. The inspection report indicates the inspection was undertaken at various dates in April and May 2022. Within the report, issues are noted with respect to gaps along the exterior doors allowing ingress of moisture and pest as well as the front door lock being in a state of disrepair. L.B. in her testimony says that the exterior doors occasionally do not lock and that she has heard of break-ins occurring within the

residential property. The inspection report further notes evidence of mice throughout the building.

J.R. testified that the Landlord has retained the services of a pest control company that regularly attends the residential property. The Landlord's evidence includes entry notices to the rental unit from the fall of 2021 regarding pest control. I was advised by Landlord's counsel that a sign was posted to the laundry room door with respect to reporting the issues to the contractor providing the machines and the Landlord's evidence includes a copy of a letter to that effect sent out to the building's residents.

Both parties submit letters from other tenants at the residential property, either for or against J.R. as a building manager. The Landlord provides a copy of a letter from A. stating that "it was uncool of [the Tenant and T.L.] to bombard [J.R.] like that" and that she though J.R. was an "incredible building manager". The Landlord itself provides a letter in support of J.R.'s abilities as a building manager.

In closing submissions, Landlord's counsel submitted the dispute is not really about maintenance issues but is really one of an unworkable relationship between the L.B. and J.R.. Landlord's counsel suggested that L.B. has exaggerated and fabricated certain issues and that the J.R. has never had similar issues with a tenant in her 24 years employed as the resident building manager. It was argued that if the One-Month Notice is not upheld, he was uncertain what would be in store for the parties. I am advised by Landlord's counsel that the Tenants have filed an application seeking $40,000 in compensation to be heard next month. Landlord's counsel further emphasized the deleterious impact the present dispute has had on J.R.'s health and wellbeing and that the Tenants ought to be evicted.

Tenants' counsel emphasized that the issue here is that the Tenants have had serious and ongoing maintenance issues that have gone unaddressed by the building's manager. It was argued that the One-Month Notice amounts to a retaliatory notice served by J.R. after the Tenants brought forward a complaint to the Landlord directly. Tenants' counsel suggests the letter from the Tenants to the Landlord was justified under the circumstances. It was argued that the Landlord's position is that the Tenants cannot assert their rights under the *Act*, namely their rights under s. 32 that the Landlord maintain and repair the property and the rental unit.

Analysis

The Tenants seek an order cancelling the One-Month Notice. The Landlord seeks an order of possession.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to s. 47(1)(d)(i) of the *Act*, which is due to a significant interference or an unreasonable disturbance of another occupant or the landlord by the tenant or the tenant's guest. Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

In this instance, I find that the One-Month Notice was received by the Tenants on March 15, 2022 as confirmed by the Tenants at the hearing. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application disputing the One-Month Notice on March 17, 2022. Accordingly, I find that they filed their application within the time permitted to them under s. 47(4) of the *Act*.

Tenant's counsel raises issue with the form and content of the One-Month Notice. Section 47(3) of the *Act* requires all notices to end tenancy issued under s. 47 to comply with the form and content requirements set by s. 52, which states the following:

> **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,
> (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
> (e) when given by a landlord, be in the approved form.

I note that the form used by the Landlord in the present instance is an older version of the standard form RTB-33, having been approved by the director in 2016. The most recent version of the form was approved by the Director in November 2021. As stated in the preliminary issue section of this decision, J.R. is not the Landlord. Despite this, she lists herself as the Landlord in the One-Month Notice.

Looking first at the form of the One-Month Notice, I note that the principal differences between the 2016 form and the current one is mostly related to formatting. All of the relevant information between both forms are identical and reflect the language of s. 47 of the *Act*, which has not been amended from since the 2016 form was issued. I accept that this is an older version, though from my view it still complies with s. 52(e) of the *Act*.

With respect to J.R. listing herself as the Landlord, there can be no doubt who the Landlord is and that J.R. is an agent and employee of the Landlord. The definition of s. 1 of the *Act* does include persons who, on behalf of the landlord, exercise powers and duties under the *Act*. Broadly speaking, J.R. would likely fall within this definition. Further, s. 68 of the *Act* permits the amendment of a notice to end tenancy that fails to comply with s. 52 where the person receiving it knew, or should have known, the information was omitted from the notice, and it would be reasonable to amend the notice under the circumstances. The Tenants have a copy of the tenancy agreement, they know or should have known who the Landlord is and are equally aware that J.R. is the building manager. To the extent that there is an error, I would amend the One-Month Notice to correct the issue.

In light of the above, I find that the One-Month Notice complies with the formal requirements of s. 52 of the *Act*.

Before proceeding to the substantive issue, the Tenants and Landlord expended a great deal of time and resources in attempting to prove or disprove the various allegations, many of which I have not summarized above as I found them to be irrelevant. J.R.'s abilities as a building manager is not on trial. Further, I am not asked to make findings with respect to whether repairs are necessary. The issue is whether the Landlord, on a balance of probabilities, has proven that the Tenants conduct constitutes an unreasonable disturbance or significant interference to other occupants or the Landlord.

Review of the One-Month Notice indicates that it was specifically issued due to the Tenants "constantly" sending letters to the building managers employer "slandering" her and her capabilities. I pause to note that it is conceivable that a tenant's conduct may

constitute harassment of a building manager warranting an end to the tenancy under s. 47(1)(d)(i). However, I am not satisfied that the Landlord has proven that that is the case here.

The Tenants raise issue with the state of repair within the rental unit and the residential property. Section 32(1) of the *Act* requires landlords to maintain and repair the property and tenants have the right to demand that landlords comply with s. 32(1). Ideally, if repair issues arise, they are dealt with by the tenants and landlords in the normal course of events. If they are not, a tenant has the right to seek an order for repairs from the Residential Tenancy Branch. I make no finding on whether specific repairs are necessary here, as that issue is not strictly before me, though I do note that the municipal inspection does suggest that some repair issues are present and ought to be addressed. Considering the Tenants' concerns with respect to the repair issues, they made requests of the building manager and made those concerns known to the Landlord directly. There is nothing in the *Act* from preventing the Tenants from escalating their requests to the Landlord when they feel they have been unaddressed by the building manager.

I have read the letter from L.B. to the Landlord. I agree that it is less than kind to J.R.. I suspect that L.B.'s letter contains a level of hyperbole that is a disservice to what might otherwise be her legitimate concerns with respect to the outstanding repair issues. I have also reviewed the videos provided to me by the Tenants. I find that neither L.B. nor J.R. come out looking sensible in the recordings. It always strikes me as peculiar for individuals to feel the need to record their conversations with others, much less a building manager at the property in which they reside. I make these comment because I find that what has likely occurred here is that both J.R. and L.B. have needlessly escalated and personalized an otherwise routine issue faced by landlords and tenants throughout the province. This is unfortunate. Most unfortunately, I accept that it has had a negative impact on the well-being and mental health of J.R. and L.B..

The personalization of this dispute can be seen in the language used by L.B. in her letter to the Landlord. It can also be seen in J.R.'s letter of March 15, 2022 and in the One-Month Notice itself, which does not list the Tenant's conduct toward the building manger but of the Tenant slandering the building manager to her employer. In other words, the issue so far as the One-Month Notice is concerned is not the Tenant's unreasonable disturbance or significant interference of the building manager, which for example could include yelling at the building manager or directing derogatory language to the building manager. So far as the One-Month Notice is concerned, the issue is that

the Tenant made her concerns with respect to the property known to the Landlord directly by constantly contacting the Landlord. I have only been directed on one letter issued by the Tenant L.B. to the Landlord. As mentioned above, there is nothing in the *Act* preventing a tenant from raising their concerns with a landlord.

The fact that there was no warning letter issued with respect to the Tenant's conduct is, in my view, relevant here. There is nothing in the *Act* that requires landlords to issue warning letters to tenants stating, to the effect, that should their conduct persist, it will result in eviction. However, it is best practice to do so and such conduct is in keeping with the protective purpose of the *Act*. It sets expectations and, hopefully, results in a normalization of problematic conduct. In this instance, the fact that no warning letter was issued is indicative of the extent to which the conflict between L.B. and J.R. has been personalized. Again, the stated cause largely concerned L.B. reporting issues to J.R.'s employer.

When viewed as a whole, I find that the Landlord has failed to demonstrate that Tenant's conduct constitutes an unreasonable disturbance or significant interference to other occupants or the landlord. Though I agree with Landlord's counsel that the landlord-tenant relationship has likely become unworkable, that is not on its own a justification for ending a tenancy under s. 47 of the *Act*. The Tenants are permitted to communicate with the Landlord, particularly if they feel issues are not being adequately addressed by resident building manager. Though I accept the content of the letter is hyperbolized, it does not rise to the level of an unreasonable disturbance or significant interference. The One-Month Notice is hereby cancelled and is of no force or effect.

Conclusion

The One-Month Notice is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord's claim for an order of possession pursuant to 55 of the *Act* after issuing the One-Month Notice is dismissed without leave to reapply.

Those aspects of the Tenants' application that were severed, namely the claims under ss. 62, 67, and 70 of the *Act*, are hereby dismissed with leave to reapply as the tenancy has not ended.

The Landlord's claim for monetary compensation under s. 67 of the *Act* that was severed is dismissed with leave to reapply.

The Tenants were successful in their application and the Landlord unsuccessful. I find that the Tenants are entitled to their filing fee and the Landlord is not. The Landlord's claim under s. 72 is dismissed without leave to reapply. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants' $100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenants withhold $100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of the filing fee.

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 27, 2023

Residential Tenancy Branch