



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause; for an order that the landlord make repairs to the rental unit or property; and to recover the filing fee from the landlord for the cost of the application.

The hearing was originally scheduled to be heard on January 13, 2023, however it did not conclude within the time scheduled, and I adjourned the hearing to continue on February 1, 2023. My Interim Decision was provided by the parties.

The tenant, the landlord and an agent for the landlord attended on both scheduled dates and each gave affirmed testimony. The landlord also called 3 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and all evidence that I find relevant is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated December 7, 2022 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 15, 2021 and reverted to a month-to-month tenancy after May 31, 2022, and the tenant and family still reside in the rental unit. Rent in the amount of \$3,580.00 is payable on the 1st day of each month and there are no rental arrears. On July 8, 2021 the landlord collected a security deposit from the tenant in the amount of \$1,790.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and both parties have provided a copy of the tenancy agreement for this hearing.

The landlord's agent further testified that on December 7, 2022 the landlord's agent, a property manager posted a One Month Notice to End Tenancy for Cause to the door of the rental unit. A copy has been provided for this hearing and it is dated December 7, 2022 and contains an effective date of vacancy of January 31, 2023. The reasons for issuing it state:

- 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;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent was hired at the beginning of November, 2022 as a property manager and wanted to meet the tenant. Regular inspections are required by the landlord's insurance company, and the landlord's agent tried many times to schedule it, but the tenant said it wasn't safe to attend. The tenant said the inspection could take place in December, and the landlord's agent advised that he needed to winterize the home. On November 16, 2022 the landlord's agent went to give notice to attend on November 22, and saw the tenant's wife inside but she refused to open the door. By denying access, the tenant is putting the house at risk because regular inspections are required once per month, and it was cold and snowing. The landlord's agent always checks the heat and exterior water valve.

The landlord decided to list the house for sale, however the tenant refused to give the listing agent access to show it even after notice was given.

In October, 2022 there was a leak in the bathroom and on November 2, 2022 the tenant hired a professional to repair it. Then the landlord's agent was hired; the landlord and the landlord's agent wanted to ensure the repair was done professionally and that there was no mould, but the tenant refused access. That puts the landlord's property at significant risk. The landlord's agent does not know what damage there might be or what repairs might be required. The tenancy agreement requires the tenant to have insurance, but the tenant has not done so.

The landlord testified that rent had been increased.

On October 2, 2022 the landlord had a long conversation with the tenant about a water leakage, and the parties thought that perhaps the tenant's children caused it, and agreed to wait for a day to see if it stopped. By afternoon it was leaking again and the landlord called a plumber for an urgent repair. The plumber opened the ceiling and said that he collected a basket of water from the kitchen ceiling. A report from the plumber has been provided for this hearing. The landlord was there on October 8 and the ceiling hadn't dried completely. The landlord was there again on October 18. According to the plumber, it had to be inspected because water had been sitting for a long time. The tenant also installed a bidet in the upstairs bathroom, which was not installed correctly. The landlord does not know what damage may exist in the rental unit. The landlord tried to send an inspector from the insurance company but the tenant denied even the 2nd inspection; mould could be present. There is damage to the kitchen ceiling and wall, which has been patched. The leasing agent also saw the problem in the ceiling. The landlord tried to get more information from the contractor used by the tenant and to ensure he was qualified, but the business doesn't exist in the area, so the landlord does not believe it was a proper contractor, causing the landlord a lot of grief.

With respect to a breach of a material term of the tenancy, the tenant is supposed to have insurance, and in November, 2021 the landlord asked the tenant by email, but didn't give a deadline. It was a demand/warning letter, and the tenant didn't reply.

The biggest problem is the tenant denying showings with legal notice to enter.

The landlord's first witness (LH) is the assistant for the listing agent and handles showings and scheduling. On December 13, 2022 the listing agent was denied access for a showing at 10:00 a.m. The tenant was given written notice on December 5, but refused to allow the agent and buyer in. The listing agent told the witness that multiple

attempts were made to see it. Two realtors gave the witness summaries to keep a written record. Access was also denied on January 6, 2023, and notice was given on January 3 for a showing on the 7th, but the tenant called the real estate agent and requested no weekend showings and the parties mutually agreed to change the date to January 6 at 6:00 p.m. Four groups of buyers attended, but the tenant denied access to the realtor and to buyers. On December 5, 2022 the tenant denied access to one of the realtors but said he would allow another realtor. Then the tenant said he wouldn't allow 2 agents in at a time, but buyers want their trusted agents.

On January 11, 2023 the tenant made statements to buyers that the seller didn't want to sell. Many showings have been scheduled, but the tenant won't allow weekends. It's been very difficult, and out-of-town buyers inconvenienced.

The witness has had feedback from buyer's agents. The witness has been told that the tenant was hostile, yelling at buyers about COVID protocol, scaring them about wearing masks, gloves and booties, making it very uncomfortable for buyers, when the tenant wasn't following the protocol. The tenant would turn off lights when people entered rooms and followed them. One agent expressed about how hostile the tenant was, and other agents have expressed concerns of being met with hostility, which has impacted the ability to sell the property. Videos provided for this hearing show the tenant screaming at the landlord on the phone. Aggression and hostility continues, and the witness has served as a witness and backup person for safety reasons. The witness has collected videos from both real estate agents, one being a December, 2022 showing.

The tenant did not agree to photographs, and the witness tried in early November to coordinate that. The tenant also wanted to remove personal items, however as things progressed, the real estate agents found the tenant was not credible.

The landlord's second witness (AJC) is a realtor, and testified that the tenant was given proper notice on December 5 for a showing on December 13, however the realtor was denied access. On December 6, another realtor was allowed in by the tenant, but not the witness. Several other showings were denied by the tenant, who displayed aggression on every incident by following everyone, turning lights on and off, and told buyers that the landlord didn't want to sell. The tenant makes everyone feel uncomfortable, and intimidates buyers to leave.

On December 16 there were groups of people to see the home, and the tenant called police. The people didn't want to see the home, and wouldn't re-schedule. The police talked to the tenant's wife saying that the realtors were there legally. The sale of the

home has been impacted by the tenant's refusal to have it shown evenings or weekends. Most people work during the day and want to see homes in evenings, but the realtors were not allowed to do that. The realtors couldn't get a floor plan and could not market the home or take photographs. No one wants to look at it or put in an offer because of the problem tenant. Ultimately it will result in damages. The photographs that the relators have are old photographs from a previous MLS listing in 2018.

On November 16, 2022 the witness had a pleasant conversation with the tenant's wife, while the tenant was away. The witness explained they were there for a showing and advised that notice had been given, and she could stay; it would be as painless as possible. The showing was scheduled for 10:00 a.m. but the witness didn't access it until 10:20. The witness has always been professional.

The landlord's third witness (RH) is a realtor and testified that he gave proper notice to the tenant on December 6, 2022 to access the rental unit on December 13 between 10:00 a.m. and 12:00 p.m. for a showing. Three groups and the other relator were denied access by the tenant. The tenant had said that the other realtor had opened the door, but it was the witness (RH) who opened it; the other realtor didn't have a key. The witness tried to explain that to the tenant, but he didn't listen. Usually both realtors go in, or the other realtor would cover the witness for showings.

The witness got feedback from buyers, who are scared and don't like that situation, and that the tenant would never move out, causing problems, and they wouldn't return.

On November 16 a showing was scheduled for 10:00 a.m. The witness knocked on the door and the tenant's wife refused entry. The witness waited 10 or 15 minutes and then opened the door a few inches. The tenant's wife came from the kitchen and opened the door wider; no one pushed the tenant's wife, and no one was behind the door. Police were called, and the witness overheard the tenant's wife telling police that she got proper notice. After police left, the realtors went in and showed the home to the buyers who remained, but 2 girls had already left, scared.

Photographs are very important and the realtors were not permitted to take photographs, and had to use old ones. The tenant has made buyers uncomfortable and scared and none came back. Another agent said that the buyers didn't like the situation and the tenant was very scary.

The tenant testified that the landlord was asked on November 2, 2022 to make repairs. After waiting for a month, and nothing was done, the landlord saw that the tenant repaired it and retaliated by listing the home for sale within a week after November 2.

The landlord tried to enter 3 times without notice and then listed it. All reasons to issue the One Month Notice to End Tenancy for Cause are not based on facts. The landlord told the tenant's wife that the ceiling was dry and ready to patch, and the tenant's wife asked the landlord to attend, but the landlord didn't. The landlord checked for mould on October 18 and on October 30 the tenant sent an email asking for the repairs. The area was left open, and the landlord wasn't arranging anyone to do the repairs, but asked the tenant's wife to pay for the repairs.

The tenant has had good relations with the landlord, and there were no problems but a misunderstanding and the landlord became aggressive about repairs. Other than that, the landlord knows that the tenants take good care of the property like it's their own house. The property is not at risk, but in a very good state. The tenants have not caused extraordinary damage, but have fixed things at their own cost. The landlord didn't put curtains in as asked, and the tenant had to put in a new fridge. The tenant has completed repairs that were not the responsibility of the tenant.

The tenant has not jeopardized the rights of the landlord, and did not deny anything. Initially the landlord would arrive even on 5 minutes notice during the first year, and access was not denied.

The tenant further testified that he has checked all emails and there are none from the landlord about tenant insurance, but the tenant could have done so if the landlord had asked.

On November 16, 2022 a relator broke into the house. The tenant was not there but his wife asked the realtor to wait, but he didn't. The tenant's wife had never had that situation and didn't know what to do, so the tenant called police. The realtor treated the tenant like he is "just a tenant." The tenant followed some buyers because there were always 3 or 4 people, or up to 6. Some would enter on the right and others on the left, and the realtor would only stay in 1 room so the tenant followed others; he had to in order to avoid thefts. The tenant also denies making false accusations.

After the November 16 incident, the relator (AJC) arrived on the 22nd and on the 30th for showings. On November 12 the realtor (AJC) showed the rental home without issue, but on November 16 he behaved very badly with the tenant's wife, telling her to sit on the sofa and drink tea.

The tenant also explained that he was not in the Country in November, 2022 and his wife was alone in the house. The landlord sent a message to the tenant's wife requesting to visit the next day, but the tenant's wife didn't read the message that day.

The next day the landlord showed up but the tenants' kids were sick, which is why the landlord and property manager were denied entry. Access was never denied until November. The landlord wanted the tenants to open the house too many times.

There was no more leakage after the repair was done to the kitchen ceiling, and whatever the plumber wrote in the report is what the landlord told him to write. The repair was done by a drywall company, whose job was to patch and paint.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

A lot of the testimony and evidence relates to incidents or events that took place after the Notice was issued. Although that may assist in establishing a pattern, the landlord must establish that the landlord had cause to issue it at the time it was issued, which is December 7, 2022. Therefore, I must consider whether or not the landlord has established that as at that date or prior, the:

- 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.

There is no evidence of any disturbance. The landlord relies on a 'significant interference' and seriously jeopardizing the lawful right of the landlord, and putting the landlord's property at significant risk.

The evidence contains an email from the tenant to the landlord dated December 6, 2022 wherein the tenant requests the landlord to respect the tenant's right to quiet enjoyment, and sets out Section 28 of the *Act*. It states that the tenant informed the landlord in the beginning that weekdays are the only days the tenants' kids get to relax, and that notice to enter for showings on Saturday was served to the tenant. It also suggests that the landlord not arrange 2 showings in a week.

A video provided by the landlord shows a person posting a notice to enter to the door of the rental unit, and a conversation with the tenant, wherein the tenant tells the person that the tenant is not accepting the notice and, "Don't come on Saturday."

It is difficult to balance the tenant's right to quiet enjoyment with the landlord's right to enter the rental unit in some cases. The tenant testified that the landlord listed the home for sale out of retaliation, but I don't accept that. A landlord is entitled to sell a rental unit, which may or may not result in a notice to end the tenancy once the rental home has sold. The evidence also indicates that the tenant has told prospective purchasers that the landlord doesn't intend to sell, which was not disputed by the tenant. I find that the tenant has significantly interfered with the landlord's rights to enter the rental unit and seriously jeopardized the landlord's right to sell the rental unit.

The One Month Notice to End Tenancy for Cause also states that as at December 7, 2022 or prior, the:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that the tenant installed a bidet in the upper bathroom, which caused significant damage to the kitchen ceiling and other areas.

The landlord provided a detailed email to the tenant on October 21, 2022 which clearly sets out the sequence of events and next steps, and the tenant responded on October 22, 2022 asking that the landlord check with the plumber for the cause and to check for mould.

I have reviewed the photographs provided by the parties, and I agree that the tenant has caused extraordinary damage to the rental property.

The onus is on the to establish that as at December 7, 2022 or prior the:

- Tenant failed to complete required repairs of damage to the unit/site/property/park.

The tenant also testified that the landlord told the tenant's wife that the ceiling was dry and ready to patch, and the tenant's wife asked the landlord to attend, but the landlord didn't. The landlord checked for mould on October 18 and on October 30 the tenant sent an email asking for the repairs. The area was left open, and the landlord wasn't arranging anyone to do the repairs, but asked the tenant's wife to pay for the repairs. The tenant testified that he hired a drywaller to repair the kitchen ceiling, and there is evidence of that, albeit not in accordance with the landlord's instructions, and then entry of the landlord's inspector was denied. The landlord's position is that the tenant requests an

order for repairs but refuses to grant access to the landlord and property manager to inspect and assess. Since the tenant has taken the initiative to complete the repairs by hiring the drywaller, I cannot find that the tenant has failed to complete the required repairs, and I am not satisfied that is a reason for ending the tenancy.

The final reason quoted on the One Month Notice to End Tenancy for Cause is:

- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A material term of a tenancy agreement is a term that is so important that a party would not have entered into the tenancy if that term was not included. In order to end a tenancy for breach of a material term, the landlord must notify the tenant in writing that the term must be adhered to within a certain time period, and if not, the landlord would end the tenancy. In this case, the landlord notified the tenant that tenant insurance was required, but did not give a date by which the tenant must comply or that failure to comply would result in ending the tenancy. Therefore, I cannot find that the landlord has satisfied that the tenancy should end for that reason.

Having found that the landlord has established 2 of the reasons for ending the tenancy, I dismiss the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord make repairs to the rental unit or property.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: February 07, 2023

Residential Tenancy Branch