



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, RR, RP, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

1. An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
2. An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
3. An order for repairs to be made to the unit, site or property pursuant to section 32;
4. An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
5. Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants and the landlord attended the hearing. The landlord was represented by an agent, HL who also interpreted some testimony on behalf of the landlord. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Neither party had issues with timely service of documents.

Preliminary Issue – severing claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or

cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

Preliminary Issue – jurisdiction

The tenant presented a land title search indicating the owner of the rental property is different from the person named on the tenancy agreement.

Section 1 of the Residential Tenancy Act defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this

I am satisfied that the person named on the tenancy agreement meets the definition of landlord as described under section 1(a) of the Act.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the tenant's filing fee be recovered?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. The fixed 2-year tenancy began on August 1, 2020 and became month to month at the end of July 2022. Rent was set at \$1,950.00 per month payable on the first day of each month. Attached to the tenancy agreement is an addendum with 11 terms. The landlord points to terms 4 and 7 which state:

The tenant understands the landlord does not encourage the tenant to live in the basement and the tenant will be liable to anything that happens for living in the basement.

The tenant must get in writing the landlord's approval before doing any major renovations

On September 23, 2022, the landlord served each of the tenants with a copy of a 1 Month Notice to End Tenancy for Cause via registered mail. The tracking numbers for the mailings are recorded on the cover page of this decision. A copy of the notice was provided as evidence and the landlord chose the following reasons for ending the tenancy:

- 1. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- 2. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*

For the first reason, the landlord testified that her property manager company took over management of the rental unit in July of 2022. They set up an appointment with the tenant to review some of the repair issues the tenant had complained about. It was going well until the inspector, a member of the landlord's management team, went downstairs to look at a drainpipe the tenant complained backed up into his shower. While in the basement, the tenant became agitated and became violent with the landlord's employee. The employee was pushed out of the basement and due to this harassment, none of the staff at the property management company is willing to attend this rental unit. The landlord argues that the landlord is within their right to inspect the

unit and had a right to videotape the space downstairs which was modified to create bedrooms in the basement. The landlord supplied video evidence of the interaction between the parties however the video ends before the alleged harassment begins. The landlord did not call the employee involved in the incident to provide testimony and that person did not provide any written statement.

The second reason for ending the tenancy was the installation of the subfloor and walls to create bedrooms for the landlord's children in the basement. The landlord alleges that the space is not meant for occupation due to the unfinished nature of the space with bare wires, a boiler, washer/dryer, pipes and other dangers. The landlord directed my attention to an email sent to the tenants on August 17, 2022 where she asks the tenants to restore the basement to the original condition by August 25, 2022. The landlord testified that the tenant didn't comply with their request.

The tenant gave the following testimony. On July 11, 2020, the tenant, a property manager, asked the landlord's representative/daughter via email if she would consider renting the unit, an entire house, to his family. In this email, the tenant states, *"...We thought we could offer you a 1900/month rental rate which is lower then the 2200 rental rate but my wife and I don't like living in a house that needs lots of work; we were thinking we would spend the money to finish the basement so two of our kids would have bedrooms there..."*

The landlord's representative/daughter responds saying she will ask the landlord the same day and the tenancy agreement is signed by the parties on July 16, 2020.

The tenant testified that the landlord was fully aware of his intent to finish the basement to have bedrooms in the basement. On October 17, 2020, the landlord (named in this application) came by for an inspection and saw the temporary walls he put up and the subfloor he installed. The tenant testified that the landlord had no qualms with this at the time and has known about it since the tenancy began. The nature of the "major renovations" is a simple temporary wall constructed of 2' x 4' studs laid 24 inches apart and 1/8" wallboard attached. The studs are simply screwed to the joists above and are easily removed. There is no alteration to the structure of the property, the walls and subfloors are easily removable.

The other reason for ending the tenancy is a mischaracterization of the events. The inspector came to view the repairs and during this time he violated the tenant's privacy and expectation of privacy by videotaping the tenant's living space without permission. While the inspector was supposed to be looking at the repair issues, he went into the

basement bedrooms to take videos of their private spaces. The tenant alleges the inspector's request to go turn on the shower was a ruse to give him more time to videotape the basement. The landlord's inspector did not tell the tenant that he was videotaping the inspection and was snooping. At this time, the tenant considered the inspection done as the landlord was not trespassing. The tenant acknowledges gently pushing the inspector out the basement door. This was not an action of violence or aggression; the tenant was simply protecting his right to privacy. The tenant argues that the landlord did not provide him with a full copy of the video made by the inspector and that he wants to view the alleged incident where he seriously jeopardized the landlord's health or safety. The landlord testified that she provided the entire video of the incident.

Analysis

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I deem the tenants served with the landlord's 1 Month Notice to End Tenancy for Cause on September 28, 2022, the fifth day after they were sent via registered mail pursuant to sections 88 and 90 of the *Act*. The tenants filed an application to dispute the notice on October 3, 2022, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In this case, I find that the landlord has not satisfied me the tenant has *seriously jeopardized the health or safety or lawful right of another occupant or the landlord*. I make this finding based on the landlord's lack of evidence to support this reason for ending the tenancy. Although the landlord's employee videotaped much of the inspection incident giving rise to this reason for ending the tenancy; the incident of the alleged harassment and pushing of the employee was not supplied as evidence for me to review. Given the fact that the video evidence would have supported their submission and wasn't presented, I accept the landlord's testimony that they do not have such video evidence.

The landlord bases this allegation of seriously jeopardizing the landlord's health or safety on what I must consider to be hearsay testimony. The alleged victim of the abuse did not provide any testimony regarding the incident or provide a written statement that describes in his own words what the landlord alleges happened on the date of the inspection. Nor did the landlord provide any evidence of calling the police to report the event or provide photographs of any injuries to their employee. In this instance, the tenant's testimony holds more credibility. I accept that the tenant gently pushed the landlord's employee out of the basement after discovering what he believes to be an invasion of his family's privacy.

The second reason for ending the tenancy is the *breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*.

Residential Tenancy Branch Policy Guideline 8 states the following:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

In reviewing the evidence before me, I accept that the tenant made his intentions known to the landlord before the tenancy began. The tenant clearly indicated in his July 11, 2020 email to the landlord prior to commencing the tenancy, that he wanted to make the basement space into bedrooms for his children. I am not convinced the landlord was oblivious to the tenant's intentions.

I also turn to the specific clauses in the tenancy agreement addendum relied upon by the landlord. Clause 4: *The tenant understands landlord does not encourage the tenant to live in the basement and the tenant will be liable to anything that happens for living in the basement.* Clause 4 clearly contemplates that the tenant was going to use the basement as part of their occupied space. I find this clause to be more of a limit to the landlord's liability should any harm come to the landlord's family should the landlord choose to use the space for bedrooms. It is not a prohibition on the use of the space that I would consider to be a material term if breached.

Second, clause 7 reads: *The Tenant must get in writing the landlord's approval before doing any major renovation.* The meaning of "major renovation" is left open to interpretation. The landlord contends that the walls and subfloor are major while the tenant states they are merely temporary and can be taken down easily. I find myself in agreement with the tenant. I find the landlord has provided insufficient evidence to satisfy me the erection of the temporary walls and removable subfloors constitute major renovations. Consequently, I find the landlord's second reason for ending the tenancy to be invalid.

I find both reasons for ending the tenancy are invalid and I cancel the landlord's notice to end tenancy for Cause. This tenancy shall continue until it is ended in accordance with the Act.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The tenant may reduce a single payment of rent due to the landlord by \$100.00 pursuant to section 72 of the Act.

Conclusion

The notice to end tenancy for Cause is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

The remainder of the issues identified in the tenant's Notice of Dispute Resolution Proceedings are dismissed with leave to reapply. Leave to reapply does not extend any

deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution.

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 16, 2023

Residential Tenancy Branch