



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants October 25, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 12, 2022 (the “Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To recover the filing fee

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants’ evidence.

The Tenants testified that the hearing package and their first set of evidence were sent to the Landlord by registered mail November 10, 2022, and Tracking Number 607 relates to this. The Tenants testified that a second package of evidence was placed in the Landlord’s mailbox February 10, 2023. The Tenants testified that the Landlord was served at the address for the Landlord on the Notice. The Tenants submitted documentary evidence of service including the Canada Post tracking information showing the Landlord received the hearing package and first set of evidence November 15, 2022.

Based on the undisputed testimony of the Tenants and documentary evidence of service, I find the Landlord was served with the hearing package and first set of the Tenants' evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). Based on the Canada Post tracking information, I find the Landlord received the package November 15, 2022. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

In relation to the Tenants' second package of evidence, I accept the undisputed testimony of the Tenants and find the Landlord was served with this in accordance with section 88(f) of the *Act* on February 10, 2023. Pursuant to section 90(d) of the *Act*, the Landlord is deemed to have received the package February 13, 2023. I find the Tenants complied with rule 3.14 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started December 08, 2021.

Should the Notice be cancelled?

The Notice was submitted. The Tenants testified that they received the Notice October 12, 2022.

The hearing proceeded for 25 minutes and nobody for the Landlord called into the hearing during this time.

Are the Tenants entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

The Tenants testified that there have been two incidents with the Landlord causing them to seek an order to suspend or set conditions on the Landlord's right to enter the rental unit.

First, on October 8th when the Landlord did an inspection of the rental unit, the Landlord refused to leave the rental unit and took photos of the Tenants without permission and for no reason. The Tenants called police who spoke to the parties over the phone and told the Landlord to leave the rental unit immediately.

Second, on the day the Landlord posted the Notice to the door, the Landlord used their set of keys to open the rental unit door. The Tenants do not know if the Landlord entered the rental unit because they did not have cameras at the time. However, the Tenants reported this to police who said they would give the Landlord a warning about this.

The Tenants testified that the Landlord also just sends text messages or calls them on the phone when the Landlord is coming to the rental unit and wanting to enter.

The Tenants submitted documentary evidence to support their position.

Analysis

Should the Notice be cancelled?

Pursuant to rule 6.6 of the Rules, the Landlord had the onus to prove the validity of the Notice. Given the Landlord did not appear at the hearing, the Landlord failed to prove the validity of the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Are the Tenants entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

I accept the undisputed testimony of the Tenants about the Landlord using their key to open the door of the rental unit without notice or permission. I also accept that the

Landlord sends text messages or calls the Tenants on the phone when they want to attend and enter the rental unit.

The Landlord cannot enter the rental unit without complying with the following section of the *Act*:

29 (1) A landlord **must not enter a rental unit** that is subject to a tenancy agreement **for any purpose unless one of the following applies:**

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The Landlord is ordered to comply with section 29 of the *Act*. If the Landlord does not comply with section 29 of the *Act* moving forward, the Tenants can seek further orders from the RTB including orders to change the locks to the rental unit and orders for compensation.

Given the Tenants have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord is ordered to comply with section 29 of the *Act*.

The Tenants can deduct \$100.00 from their next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 06, 2023

Residential Tenancy Branch