



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, RR, RP, OLC CNL, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenants. On November 10, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On January 18, 2023, the Tenants made another Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to Section 49 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and the Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Records indicated that the first Notice of Hearing package was provided to the Tenants on November 23, 2022, which included instructions to serve the Landlord by November 26, 2022. J.N. advised that he served this package to the Landlord by hand on December 6, 2022. The Landlord confirmed that this package was received, and he did not have any position with respect to this late service. Despite this package being served late, contrary to Rule 3.1 of the Rules of Procedure (the “Rules”), given that the hearing was scheduled so far into the future, and as the Landlord did not provide any

reason why it would be prejudicial to proceed, I am satisfied that the Landlord has been duly served this package.

J.N. advised that he attempted to serve their evidence to the Landlord by hand on March 8, 2023, but this was refused, so he placed this evidence in the Landlord's mailbox on March 9, 2023. He read from a proof of service form that was signed by his witness corroborating service. He stated that he did not serve any digital evidence to the Landlord.

The Landlord advised that his brother went to the rental unit on March 7, 2023, to attend to a matter made at the Tenants' request, and that his brother refused service of this evidence. He disputed getting any evidence in his mailbox after that date.

Based on the testimony from the parties, while the date is inconsistent, I am satisfied that an agent of the Landlord refused service of evidence by hand on or around March 7, 2023. As such, I am satisfied that service by hand was attempted, and that the refusal to take evidence does not render it not served. Consequently, I find that the Landlord was sufficiently served the Tenants' evidence and that this was served in accordance with the timeframe requirements Rule 3.14. of the Rules. As a result, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served the Tenants with his evidence on March 14, 2023, by registered mail. J.N. confirmed that he received this on or around March 17, 2023, and stated that he was prepared to respond to it. Despite this evidence being served late, and not in accordance with the timeframe requirements of Rule 3.15 of the Rules, as the Tenants were prepared to respond to it, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

J.N. then advised that he served the second Notice of Hearing package to the Landlord by registered mail on January 27, 2023, and the Landlord confirmed that this package was received. As such, I am satisfied that the Landlord has been duly served this package.

However, the Landlord advised that the Two Month Notice to End Tenancy for Landlord's Use of Property, dated December 26, 2022, was served that same day to the Tenants by registered mail, and he attached a registered mail tracking receipt to corroborate this service. As such, this notice would have been deemed received on December 31, 2022, and the Tenants would have been required to dispute this notice on January 15, 2023. As this was a Sunday, the Tenants must have disputed this notice on Monday January 16, 2023, at the latest. Records indicate that the Tenants made this Application on January 18, 2023, which was late. As such, I have dismissed the Tenants' Application with respect to this notice. While an Order of Possession is permitted to be granted in this instance, the parties were asked to make submissions on the number of pages of this notice that were served.

J.N. testified that they were only served two pages of this four-page notice, as per their documentary evidence. The Landlord testified that he served all four pages, despite his evidence only showing the first two pages of the notice. In assessing these submissions, I find it important to note the following excerpt from a previous Decision dated May 2, 2022, involving the parties (the relevant file numbers are noted on the first page of this Decision:

The Tenant testified that they did not receive page 2 of the Notice and I accept this because the Tenant submitted a copy of the Notice and page 2 is missing. The Landlord did not submit a copy of the Notice or any documentary evidence showing what was served on the Tenants. In the circumstances, I am not satisfied all three pages of the Notice were served on the Tenants and therefore am not satisfied the Page: 4 Notice complies with sections 52(e) or 47(3) of the Act. Given this, I am not satisfied the Notice is a valid notice to end tenancy and I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the Act.

Clearly in this instance, the Arbitrator was satisfied that the entirety of the applicable notice was not served to the Tenants. From this, I can reasonably infer that the Landlord would learn from this and would provide a copy of the entire notice to support a conclusion that the complete notice was served. As the Tenants' and Landlord's documentary evidence are both only the first two pages of this notice, I can reasonably conclude that only these pages were served. As such, I do not find that the entire notice was served and therefore, it is not a valid notice. Ultimately, as a result, the Two Month Notice to End Tenancy for Landlord's Use of Property, dated December 26, 2022, is cancelled and of no force or effect.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, and as the Two Month Notice to End Tenancy for Landlord's Use of Property, dated December 26, 2022, has been cancelled, this hearing primarily addressed issues related to the One Month Notice to End Tenancy for Cause, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on April 15, 2020, that rent was currently established at an amount of \$1,850.00 per month, and that it was due on the first day of each month. Neither a security deposit nor a pet damage deposit was ever paid. The Landlord did not create a written tenancy agreement, which is a requirement of the *Act*.

J.N. advised that the tenancy actually started on November 15, 2019. However, he agreed that rent was currently established at an amount of \$1,850.00 per month, that it was due on the first day of each month, and that neither a security deposit nor a pet damage deposit was ever paid.

The Landlord had no idea when the Notice was served to the Tenants, and this was evident because he has served so many notices to end tenancy in the recent past, and he was unsure which one was being referred to. When the date on the relevant Notice was read to him, he confirmed that he likely served this on or around October 28, 2022, by registered mail. Clearly the Tenants received this Notice as they indicated inasmuch on their Application.

The reasons the Landlord served the Notice are listed below:

- There are an unreasonable number of occupants in a rental unit;
- The Tenants or a person permitted on the residential property by the Tenants have engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord; or,
- The Tenants purport to assign the tenancy agreement or sublet the rental unit without first obtaining the Landlord's written consent as required by Section 34 *[assignment and subletting]*;

The effective end date of the tenancy was noted on the Notice as December 1, 2022.

When the Landlord was asked to make submissions on what illegal activity the Tenants were engaging in to warrant service of the Notice, he would continue to list a number of incidents which were not illegal. He was then afforded multiple opportunities to describe the illegal activities; however, he continued to insist that smoking marijuana in the rental unit was illegal. He provided no documentary evidence to substantiate that the smoking of marijuana was illegal.

He then advised that he permitted J.N. to rent to one other person so that there would be two people living in the rental unit in total. However, he claimed that J.N. then rented to two other people in August 2021, so that there were three people in the rental unit. He testified that one of these occupants moved out in or around May 2022, and that since this time, only J.N. and one other person were living in the two-bedroom rental unit. He then stated that J.N. allowed his mother and sister to reside in the rental unit as of December 27, 2022.

He then acknowledged that the reasons and the details of cause on the October 28, 2022, Notice were simply an identical copy of a One Month Notice to End Tenancy for Cause that was previously served to the Tenants on January 29, 2022. As well, he acknowledged that this previous notice to end tenancy was cancelled in an earlier Dispute Resolution proceeding, and that he simply re-served this copied notice on October 28, 2022, with different service and effective dates.

J.N. advised that there is only one person living with him currently, and that he was always permitted to have four other people living there, plus a dog. He confirmed that the Landlord simply recycled this January 29, 2022, notice to end tenancy which was already cancelled in a Decision dated May 2, 2022. He testified that he has had five previous hearings before, in which he has been successful in all of them, and that the Landlord continues to harass him by incessantly serving him invalid notices to attempt to end his tenancy. He submitted the previous Decisions of the Residential Tenancy Branch for consideration to support this position (the relevant file numbers are noted on the first page of this Decision).

As well, he provided a copy of the many notices to end tenancy served to him by the Landlord to illustrate the Landlord's behaviour. He stated that the Landlord's own evidence demonstrates that he is also bullying a neighbour in an attempt to force that person out so that he can increase the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In reviewing this Notice, given that the Landlord simply copied the details of cause from a previous notice that had already been determined to be cancelled, I do not find that this is a valid notice as the Landlord is simply attempting to end the tenancy based on the same reasons from a notice that was served some nine months prior. Even if I were to consider this a valid Notice, two reasons the Landlord served this Notice were for illegal activity. However, the Landlord was given ample opportunity to describe what activities the Tenants engaged in that were illegal. The Landlord was unable to make any submissions on what illegal activities were engaged in, nor did he provide any documentation to demonstrate that any activities mentioned were against the law.

Moreover, with respect to the other reasons on the Notice, I find it important to note that the Landlord did not bother to have a written tenancy agreement created. As such, there are no terms of the tenancy that have been established, other than the basic ones described in the second and third paragraphs of the Background and Evidence section of this Decision above. Furthermore, the Landlord has not submitted any documentary evidence that the Tenants assigned or sublet the tenancy as contemplated by the *Act*.

In addition, while the rental unit is a two-bedroom space, he testified that from approximately May 2022 to December 27, 2022, J.N. only had one other person living there. Clearly, at the time the Notice was served on October 28, 2022, there were not an unreasonable number of occupants in the rental unit as there were only two people residing there. Consequently, serving this Notice at that time for this reason would not have been valid.

In reviewing all of the evidence before me, it is clear that the disorganized, haphazard, and careless manner with which the Landlord is managing this tenancy is a significant problem in this tenancy. It is not lost on me that the Tenants could also be acting in a manner that would jeopardize their tenancy. However, given the sheer number of notices to end tenancy that have been given by the Landlord that were disputed and then ultimately cancelled apparently, in addition to at least one Decision Ordering the Landlord to make repairs while granting the Tenants a rent reduction, the Landlord has been cautioned about the consequences of the excessive service of notices. As well, the Landlord was also cautioned about the appearance and validity of any future notices to end tenancy, based on this pattern of behaviour.

Regardless, as I am not satisfied that the Landlord has adequately substantiated the validity of the Notice. As such, I find that the Notice is cancelled and of no force or effect.

As an aside, the parties were informed during the hearing that the Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain circumstances. The Tenants have been informed that they can contact the Residential Tenancy Branch to inquire about initiating an investigation by the Compliance and Enforcement Unit should they believe that the Landlord is intentionally attempting to circumvent or repeatedly breach the *Act*.

As the Tenants were successful in their second Application due to the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property being invalid, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of October 28, 2022, to be cancelled and of no force or effect. As well, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of December 26, 2022 to be cancelled and of no force or effect. This tenancy will continue until otherwise ended in accordance with the *Act*.

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: March 24, 2023

Residential Tenancy Branch