



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, OPT, MNRT, MNDCT, RR, ERP, RP, AAT, PSF, LRE,
LAT, OLC

Introduction

The Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) dated October 22, 2022, for a monetary order to recover the costs of emergency repairs, for a monetary order for monetary losses or other money owed, for an order of possession of the rental unit or site, for an order that the Landlord provide services for facilities required under the tenancy agreement or the *Act*, for permission to change to the locks to the rental unit, for an order that the Landlord emergency make repairs to the rental unit, for an order to suspend the Landlord’s access to the rental unit or rental site, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

Tenants filed an amendment to their Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”), on December 29, 2022, adding requests to cancel a One-Month Notice to End Tenancy for Cause, (the “One-Month Notice”) dated December 21, 2022, for an order that the Landlord emergency make repairs to the rental unit, and for a reduction in rent for repairs, services or facilities agreed upon but not provided.

The Landlord and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters – Exchange of Evidence

At the outset of these proceedings, the exchange of evidence was considered; the Landlord testified that they were not served with the Notice of Dispute Resolution Proceeding Package and the Tenant's evidence package. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Tenants provided testimony and evidence of the service of the Notice of Dispute Resolution Proceeding Package and their evidence package to the Landlord. The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding Package, on November 10, 2022, and their application to amend, and their evidence package on December 30, 2022, by Canada post express post. The Tenant submitted two Canada Post tracking numbers into documentary evidence.

The Landlord testified that they did not receive anything from the Tenants via Canada Post. The Tenants testified that they mailed the packages to the Landlord at the address that was provided to them on the Notices to end tenancy. The Landlord confirmed that address that they provided to the Tenants was the correct address and testified that the address listed on the Notices is a PO Box. Section 88 and 90 of the *Act* states the following regarding the service of documents:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;***
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;***

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service provided for in the regulations.*

When documents are considered to have been received

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the fifth day after it is mailed;*
- (b) if given or served by fax, on the third day after it is faxed;*
- (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;*
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.*

I find that there is sufficient evidence before to prove that the Tenants have served the Landlord by Canada Post mail in accordance with section 88(c) of the Act and that those documents were deemed received by the Landlord five days after they were sent pursuant to the deeming provision set out in section 90(a) of the Act. Therefore, I find that the Landlord had been duly served in accordance with the Act.

Preliminary Matter – *Related Issues*

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as another issue. I find that this other issue is not related to the Tenant's request to cancel the Notice. As this other matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for a monetary order to recover the costs of emergency repairs, for a monetary order for monetary losses or other money owed, for an order of possession of the rental unit or site, for an order that the Landlord provide services for facilities required under the tenancy agreement or the Act, for permission to change to the locks to the rental unit, for an order that the Landlord emergency make repairs to the rental unit, for an order to suspend the Landlord's access to the rental unit or rental site, for an order for the Landlord to comply with the Act, for an order that the Landlord emergency make repairs to the rental unit, and for a reduction in rent for repairs, services or facilities agreed upon but not provided.

I will proceed with this hearing on the Tenant's remaining claims before me, to cancel the 10-Day and One-Month Notice.

Issues to be Decided

- Should the 10-Day Notice dated October 22, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the One-Month Notice dated December 21, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlords testified that they had served the 10-Day Notice to the Tenants on October 22, 2022, but that the Tenants had paid the amount indicated on that Notice within five days and that this payment cancelled their Notice.

The Landlord testified that they had served the One-Month Notice to End tenancy to the Tenants by process server on December 21, 2022, indicating that the Tenants were required to vacate the rental unit as of January 31, 2023. The Tenants submitted a copy of the Notice into documentary evidence.

The reason checked off by the Landlord within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Landlord testified that they were ending the Tenants' tenancy due to the Tenants repeated actions of restricting the Landlord and the Landlord's contractors from access to the common areas on the rental property.

The Tenants testified that they rented the entire rental property under their tenancy agreement, not just the house but the pastures and the barn as well. The Tenants testified that they have not restricted the Landlord's access but only required the Landlord to provide them with a written notice before they access the rental property, as required under the *Act*. The Tenants testified that they did not submit a copy of the Tenancy Agreement as the Landlord has never provided them with a copy. The Tenants submitted that they have never restricted the Landlord's access to the property when proper notice of entry was given.

The Landlord testified that the tenancy agreement rented the house to the Tenants with use of the common areas around the farm and that the Tenants do not have exclusive use of the full farm under the tenancy agreement. The Landlord testified that they had emailed a copy of the tenancy agreement to the Tenants but agreed they also had not provided a copy of that document to these proceedings.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenants have applied to cancel a 10-Day Notice to end tenancy issued by the Landlord. Section 46 of the *Act* states the following regarding 10-Day notices:

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*
(a) pay the overdue rent, in which case the notice has no effect,
or
(b) dispute the notice by making an application for dispute resolution.

When a tenant receives a 10-Day Notice to end the tenancy for unpaid rent, the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this, the notice is of no effect, as per section 46(4) of the *Act*.

I accept the testimony of the Landlord that they received the full outstanding rent as indicated on the 10-Day Notice within five days. Therefore, I find that the Tenants did pay the outstanding rent due within five days of receiving this Notice, as allowed by the *Act*, rendering the Notice of no effect. Consequently, I find that there is no need for me to determine the validity of this Notice, as pursuant to section 46(4) of the *Act*, this Notice is of no effect.

The Tenants have also applied to cancel a One-Month Notice issued by the Landlord. The Landlord has submitted that they issued this Notice due to the Tenants' actions of restricting their access to the common areas on the rental property. The Tenants have submitted that they have not restricted the Landlord's access to the rental property but

that they have only enforced their right to a written notice before the Landlord accesses the property. Based on the submission of these parties I find that the crux of the matter before me is whether or not this tenancy included exclusive use of just the farmhouse or the farmhouse, the barn, and the surrounding pastures.

I have reviewed the submissions made during these proceedings and I find that the parties, in this case, offered conflicting verbal testimony regarding what parts of the rental property are exclusive use vs common use under this tenancy agreement. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proof regarding the One-Month Notice they issued, therefore, I find that it is the Landlord who holds the burden of proof on this point.

I have reviewed the totality of the evidence submitted during these proceedings and I find that the Landlord has submitted insufficient documentary evidence to terminate the tenancy for the reason indicated on the Notice they issued. Specifically, the Landlord has failed to show that this tenancy agreement was for the exclusive use of the farmhouse only and that the Tenants had interfered with their right to access the rental property by requiring written notice from the Landlord before access.

Consequently, I grant the Tenants' application to cancel the One-Month Notice dated December 21, 2022, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenants' application to cancel the 10-Day Notice dated October 22, 2022, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

The Tenants' application to cancel the One-Month Notice dated December 21, 2022, is granted. The tenancy will continue until legally 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 10, 2023

Residential Tenancy Branch