



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT, OPC, OPN, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the “Act”) for Orders as follows:

The tenant applied as follows:

- For cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with landlords AJ and RJ appearing and tenant’s agent RC appearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 15, 2022 with an effective date of January 1, 2023. Pursuant to section 88 of the Act the tenant is found to have been served with the notice in accordance with the Act,

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issues

The parties clarified that the tenant is a company, and the agent was incorrectly named as the tenant in the dispute. Additionally, one of the landlords was not named in the initial dispute and wishes to be added as a party. Pursuant to section 64(3)(c) of the Act the style of cause is amended accordingly.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Are the landlords entitled to an order of possession based on the tenant's written notice to end the tenancy?
3. Is either party entitled to a reimbursement for their respective filing fees?

Background and Evidence

The tenancy commenced April 1, 2022 for a fixed term ending April 1, 2023. Rent is \$2,800.00 per month due the first of the month. The landlord holds a security deposit of \$1,400.00 and a pet deposit of \$300.00. The tenant still occupies the rental unit.

The tenant testified that the tenant is a company that supplies supportive living to adults who qualify for their services. The tenant rents the entire single-family dwelling which has living units in both the basement and on the main level of the unit and these units are housing for the tenant's clients.

The landlords testified that on September 1, 2022 there was a sewer backup in the rental unit. The sewer backup caused extensive damage to the basement living unit. The landlords hired a restoration company to remediate the basement which required the entire basement unit to be gutted. A plumber attended the rental unit with a camera to investigate the cause of the sewer backup. The plumber determined that there was a broken pipe used to smoke either tobacco or drugs obstructing the sewer line. The pipe was the cause of the sewer backup. The landlord produced an email from the plumber dated October 24, 2022 in evidence.

The landlords' position is that one of the tenant's clients put the pipe into the sewer line which then caused the extensive damage to the rental unit including the flooring, walls and ceiling. The landlords also testified that they were advised by one of the individuals who works with the clients in the rental unit that a client was using the washroom when the sewer backed up. The landlords argued that this client likely put the pipe into the sewer line at that time.

The landlords stated that they purchased the rental unit in March 2022 and had heard that the previous occupants were drug users.

The tenant's agent stated that the individuals who live in the rental unit smoke cigarettes, and the client who lived in the basement, who had moved in the same day as the sewer backup, also used cannabis. The clients did not use any other drugs. He further testified that he did not believe any of the clients living in the rental unit put the pipe in the sewer system. The tenant's agent stated that he had heard from the neighbours of the rental unit that prior to the landlords' purchase of the rental property it was a house known for drug use. The tenant's agent stated that when the sewer backup occurred, they cooperated with the landlord to the best of their ability to remedy the situation. He stated that the basement suite in the rental unit is now liveable and is currently occupied by their clients.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The landlords provided no evidence that the tenant had given them a notice to vacate the rental unit, therefore the landlord's claim for an order of possession on that ground is dismissed.

The landlords listed the following reasons for ending the tenancy on the One Month Notice:

- The tenant or person permitted on the property has caused extraordinary damage to the rental unit
- The tenant has not done required repairs to the rental unit

I find that the landlords have not established that the current tenant or their clients caused the damage to the rental unit. Both parties provided some second-hand evidence that the rental unit had been occupied by persons known to use drugs prior to the landlords purchasing the rental property. While that evidence isn't of particular weight, it is bolstered by the plumber's email to the landlord on October 24, 2022 where the plumber states:

During the visit and camera of the mainline for 2802 oak, I encountered what we found to be a broken bowl of a Crack pipe and had also found the broken stem. We managed to push the broken piece out of the mainline. It was clear that whoever had lived in the house previously liked to flush paraphernalia.

Other than that and the 3 bellies of the line we saw, couldn't find anything else wrong with or inside the line.

In this email the plumber seems to state that the pipe had been in the line for some time. Taken with the evidence regarding the previous occupants of the rental property, as well as the statement of the tenant's agent that the clients who occupy the rental unit are not drug users, I am not satisfied that the landlords have established that the current tenant is responsible for the pipe in the sewer line.

As I have found that the tenants are not responsible for the pipe in the sewer line, I further find that the tenants were not required to repair the damage to the rental unit. I find the One Month Notice dated November 15, 2022 is not valid. The tenant's application is granted. The One Month Notice is cancelled.

The landlord's application for an order of possession based on the One Month Notice is dismissed.

As the tenant was successful in their application, they are entitled to recover the filing fee for the application.

Conclusion

The One Month Notice is cancelled. The landlord's application for an order of possession is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant is also entitled to deduct \$100.00 from one month's rent on a one time basis in recovery of the filing fee.

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 14, 2023

Residential Tenancy Branch