



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

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

Both parties attended the hearing. The landlord TB appeared with advocate JF. Tenants SL, ZL, and MW also appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated December 21, 2022 with an effective date of January 31, 2023. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The landlord acknowledged that she received the tenants’ dispute notice and evidence. The tenants denied receiving the landlord’s evidence. The landlord testified that the evidence was taped securely to the door with packing tape on January 27, 2023 at 3:44pm. The landlord took a photo which was provided in evidence. The landlord drove by the rental unit approximately 90 minutes later and the materials had been removed from the door. The landlord provided an attestation in evidence describing service.

Based on the landlord's evidence I find the tenants were duly served as of January 30, 2022 in accordance with sections 88, 89 and 90 of the Act.

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. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced March 1, 2019 on a month to month basis. Rent is \$1000.00 per month due on the first day of the month. A security deposit of \$500.00 and a pet deposit of \$200.00 is held in trust by the landlord. The tenancy agreement was provided in evidence.

Landlord's Evidence

The landlord stated that starting April 8, 2022 and up to December 14, 2022 the landlord gave the tenants four friendly reminders and three caution notices regarding the condition of the rental property. The landlord defined a friendly reminder as a reminder to rectify something that has come up initially in inspections of the rental unit by the landlord. A caution notice is a notice the landlord gave to the tenants if the issues were not remediated after receipt of the friendly reminder.

The landlord produced written recommendations from an individual dated February 3, 2020 to minimize the chance of bed bugs. It was recommended at that time that the rental unit needed to be cleaned up, food needs to be put away, fabrics should be placed in totes, and the tenants should practice better housekeeping.

The landlord produced photos in evidence of both the inside and outside of the rental unit. The pictures were taken February 24, 2022, March 19, 2022, April 8, 2022, May 10, 2022, July 18, 2022, August 23, 2022, and October 10 and 23, 2022 of both the inside and outside of the residence. The landlord described the photos showing garbage and clutter both inside and outside the residence as well as dirty windows and window tracks and mold in the bathroom and laundry room. Both the bathroom and laundry room were dirty and the bathroom fan was clogged with dirt to the point that it wasn't functioning properly to remove the moisture. The photos also depicted empty pizza boxes and food wrappers and a dirty fridge. The landlord alleged that the photos

showed the tenants' lack of response to the various notices given by the landlord to remediate the clutter, dirt and mold over those months.

The landlord stated that written friendly reminders were given to the tenants on April 8, 2022, May 23, 2022, August 28, 2022, and December 14, 2022. Written caution notices were given to the tenants on May 23, 2022, June 29, 2022, and October 5, 2022. All notices were provided in evidence.

The photos were taken after the reminders and caution notices were given and show that the tenants were making minimal efforts to address the landlord's concern. The landlord stated that the tenants were responsible for outside yard maintenance as per the tenancy agreement.

The landlord produced an invoice for spraying for bedbugs in the rental unit dated October 2022. She wished to be compensated for this expense.

Tenants' Evidence

The tenants' stated that they received the friendly reminders and caution notices from the landlord. The tenants also produced pictures of both the inside and the outside of the residence. They produced two pictures of the front yard in June and August 2022 showing plants growing and short grass. All of the other pictures were taken in December 2022. They were taken both of the inside and outside of the residence showing their cleanup efforts. The tenants did not provide the specific date in December that the photos were taken however, they noted that the snow had not been disturbed suggesting that the cleanup had not been at the time the photos were taken.

The tenants also produced multiple photos of the cleaning of the bathtub both before and after to demonstrate that the tub had issues with the finish peeling off and that it was not just dirt on the bathtub as suggested by the landlord. The tenants testified, and pointed out in the photos, that the tub was not properly caulked. The tenants also produced pictures of storage units purchased to store items as suggested by the landlord. The tenants pointed out that the date of purchase of the units, December 22, 2022 was shown on the pictures.

The tenants' position was that they have done all of the cleanup requested by the landlord to the best of their ability upon receiving notice from the landlord to do so.

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 tenants apply 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 tenants.

The landlord issued the One Month Notice based on the tenants’ failure to comply with a material term of the tenancy agreement after having been given reasonable notice to do so.

It does not appear that either party provided the entire tenancy agreement in evidence, or if the entire agreement is in evidence, there is no indication regarding which term the tenants breached. The tenancy agreement in evidence does not have a term respecting the tenants’ requirement to maintain the rental unit to a certain standard. RTB Policy Guideline 8 states in part:

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.

As I do not have the term before me, I am unable to assess it within the scheme of the tenancy agreement. Therefore, the landlord has not satisfied their onus to establish a breach of a material term of the tenancy agreement.

The tenants’ application is granted. As the tenants are successful in their application they are entitled to recover the filing fee for the application.

Conclusion

The tenant’s application to cancel the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act. The tenants are entitled to deduct \$100.00 from one month’s rent on a one time basis in satisfaction for their 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 2, 2023

Residential Tenancy Branch