



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

The Tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking an order for the Landlords to comply with the Act, the *Residential Tenancy Regulation* (the Regulation) or tenancy agreement (“Tenancy Agreement”), pursuant to section 62 of the Act.

H.B. attended the hearing for the Landlords and R.N. and N.S. attended for the Tenants. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

N.S. testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlords on March 4, 2023 via email. N.S. stated the mailing address provided by the Landlords for service was not recognized by Canada Post. As a result, they were unable to serve via registered mail. The Tenants applied for Substituted Service and were approved to serve the Materials by email. H.B. confirmed receipt of the Materials and raised no issues with service. Therefore, I find that pursuant to sections 89 and 90 of the Act that Tenants’ Materials were sufficiently served to the Landlords.

H.B. confirmed the Landlords’ evidence was not served on the Tenants. Therefore, I exclude the Landlords’ evidence from consideration.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords entitled to a Monetary Order for unpaid rent?
- 4) Are the Tenants entitled to an order for the Landlords to comply with the Act, the Regulation or Tenancy Agreement?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Both parties agreed on the following details regarding the tenancy. The tenancy started on February 1, 2023, rent is \$2,350.00 per month due on the first day of the month. A security deposit of \$1,200.00 was paid by the Tenants, which the Landlords still hold. A copy of the Tenancy Agreement was entered into evidence by the Tenants. The Tenants still occupy the rental unit.

H.B. testified they took ownership of the rental unit on January 16, 2023. They advertised the unit for rent online and stated the post included reference to the Tenants being required to pay for utilities and strata fees.

H.B. stated the Tenants moved into the rental unit on February 1, 2023 and paid the security deposit and rent for the month of February. On February 7, 2023, H.B. registered their strata account online and noted a balance due which included a move-in fee and one month's strata fee.

H.B. testified that on February 12, 2023 they sent the Tenants screenshots of the strata fees and asked for payment. The Tenants replied saying they did not know what the charges were. The Tenants did not pay the charges.

On February 21 or 22, 2023 the Landlords served the Tenants via email and in-person via an Agent with a 10 Day Notice to End Tenancy for Unpaid Rent of \$367.65 plus \$200.00. These figures represent one month's strata fees and the move-in fee.

N.S. testified they never met the Landlords in person and other people had shown them the rental unit and took the security deposit. Strata charges were not discussed during this process.

N.S. confirmed they paid the rent for February and March 2023 and do not believe the strata fees should be charged to them. They have put the utilities in their own name and pay the bills accordingly. They are not clear on the basis of the amounts of \$367.65 plus \$200.00 sought on the Notice and thought they would just pay the rent at \$2,350.00 per month, per the Tenancy Agreement and have utilities put in their name.

N.S. testified that they received the email from the Landlords containing the Notice but did not get the Notice in-person at the time of service as it had been left with a family member. As they were not home at the time of service, they do not know which family member this was but believe the Notice was left with one of their minor children. N.S. confirmed they received the Notice via email on February 23, 2023.

As the Notice was confirmed to have been received, pursuant to section 71(2)(b) of the Act, I find that the Notice was sufficiently served for the purposes of this Act on February 21, 2023.

H.B. stated they provided the Tenancy Agreement to the Tenants via email and told them to read it carefully. The Tenancy Agreement was signed remotely by the Tenants on January 31, 2023. H.B. referred me to term number 20 (the "Term") in the contract and read it out at the hearing. This section of the Tenancy Agreement is reproduced below:

UTILITIES, STRATA AND OTHER CHARGES:

20. The Tenant is responsible for the Full payment of the following utilities and Strata charges in relation to the Property: electricity, internet and natural gas. Utilities and cable/internet are to be in one of the tenants name. The extra Ameneties that are not considered in Strata will have to pay by the tenants. Tenant will be sole responsible of the property charges.

H.B. stated this term means the Tenants have to pay the monthly strata fees. H.B. confirmed the monthly strata fees may change over time and could increase.

N.S. reiterated they think they should not have to pay the strata fees as this was not discussed and not their responsibility. They want an order stating the Landlords can not charge them for the monthly strata fees.

Analysis

1. Tenant's request to cancel the Notice

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both parties agreed that the Tenants paid rent for the month of February 2023. The amount of outstanding rent provided on the Notice is made up of a move-in fee and one month's strata fees. I find that these fees do not meet the definition of rent and that the Tenants met their duty to pay rent under section 26 of the Act. Therefore, I find on a balance of probabilities that the Notice was not given for a valid reason i.e. non-payment of rent.

Whilst a landlord may be able to charge strata fees to their tenant, where allowed by the Act or Regulation, they may not include these fees on a Notice to End Tenancy for Unpaid Rent or Utilities as strata fees are not considered rent or utilities.

Furthermore, I note that the effective date of the Notice is omitted. Means the Notice does not comply with section 52(c) of the Act which confirms the form and content requirements that notices to end tenancy must meet in order to be effective. Whilst section 68 of the Act allows an Arbitrator to correct a notice to end tenancy which does not comply with section 52 of the Act, as the effective date is omitted entirely, I am not inclined to correct this error and find that the Notice is defective.

Based on the above findings, the Tenants' request to cancel the Notice is granted and the tenancy continues.

2. Tenants' request for the Landlords to comply with the Act, the Regulation or Tenancy Agreement

The Tenants seek and order under section 62 of the Act which prevents the Landlords from charging the Tenants strata fees.

The Landlords have requested the Tenants pay both a move-in fee and monthly strata fees.

Section 7(f) of the Regulation confirms a landlord may charge a non-refundable fee for a move-in or move-out fee charged by a strata corporation to the landlord. As such, I can not issue an order preventing the Landlords from charging the Tenants the move-in fee.

In respect of the contractual right to charge the Tenants monthly strata fees, the Landlords seek to rely on the Term in the Tenancy Agreement and that they made reference to the fees in the online advertisement for the rental unit. It should be noted

that the Tenants deny any discussions of monthly strata fees prior to signing the Tenancy Agreement. I also note there is an entire agreement clause in the Tenancy Agreement. Such clauses prevent parties from relying on any discussions or negotiations outside of the agreement itself. As such, I will only be using the written agreement to make my findings regarding the contractual responsibilities of the parties under the Tenancy Agreement. The entire agreement clause is reproduced below:

51. This Lease constitutes the entire agreement between the Parties.

Considering the Term, which is reproduced in the Background and Evidence section of this Decision, the first sentence lists the “utilities and strata charges” the Tenants are responsible for and lists only electricity, internet and natural gas. There is no mention of monthly strata fees.

The Term states the Tenants have to pay “The extra Ameneties that are not considered in Strata” but does not allocate responsibility for strata fees onto the Tenants, only those outside of “Strata” so I do not interpret this sentence to mean the Tenants have to pay the monthly strata fees.

Finally, the Term also provides that “Tenant will be sole responsible of the property charges”. The “property charges” are not defined in the Term or in any other part of the Tenancy Agreement. I find that the term “property charges” is extremely broad and vague in nature.

Therefore, I find it appropriate to apply the *contra preferentem* rule which states that when there is ambiguity in a contract, language should be interpreted against the drafter of the contract which in this instance is the Landlords. Additionally, section 6(3)(c) of the Act states that terms of a tenancy agreement not expressed in a manner that clearly communicates the rights and obligations under it are not enforceable. Accordingly, I find the Term is not enforceable on the basis that it is unclear and ambiguous.

Furthermore, section 6(3)(b) of the Act states that unconscionable terms of a tenancy agreement are not enforceable. I find that had the term been clearly drafted to indicate that the Tenants are responsible for the monthly strata fees, a term requiring the Tenants to pay a significant monthly sum which was unknown to them prior to entering into the agreement would be unconscionable and therefore not enforceable under the Act.

Accordingly, I hereby order that the Landlords can not demand the Tenants pay the monthly strata fees under the Tenancy Agreement.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent dated February 21, 2023 is cancelled and the tenancy continues.

The Landlords are ordered to not demand the Tenants pay the monthly strata fees.

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 28, 2023

Residential Tenancy Branch