Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RP, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated February 10, 2023 (the "One Month Notice") pursuant to section 47;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants and the Landlord's agent HL attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Parties

This application initially named only two of the Tenants, AG and MG. The parties agreed that AG and MG's mother FFA also resides in the rental unit. The Tenants testified that there was a tenancy agreement with FFA and MG as tenants and the Landlord as landlord, but the Tenants never received a signed copy from the Landlord. The One Month Notice names FFA as a tenant. Based on the evidence presented, I find FFA is

also a tenant. As such, have added FFA as a tenant and applicant pursuant to section 64(3)(c) of the Act and Rule 7.13 of the Rules of Procedure.

This application had also included HL as a second landlord and respondent. HL testified that the Landlord is overseas, so HL is helping the Landlord as her friend. HL confirmed that he did not enter into any tenancy agreement with the Tenants. The Tenants agreed that they paid rent to the Landlord and not to HL. Based on the parties' testimonies, I find there is insufficient evidence that HL is a "landlord" as defined under section 1 of the Act. Accordingly, I have removed HL as a landlord and respondent pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

HL confirmed receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package") on behalf of the Landlord. I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act. HL confirmed that the Landlord submitted documents for another application that the Landlord is making and did not submit any documentary evidence for this application.

Preliminary Matter – Severing the Tenant's Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

> **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.
>
> **6.2 What will be considered at a dispute resolution hearing**
> The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.
>
> The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.
>
> (emphasis underlined)

In this application, the Tenants have applied to cancel a notice to end tenancy and have included other claims. Aside from the claim to recover the filing fee, I find the Tenants' other claims in this application are unrelated to the One Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss the Tenants' unrelated claims with leave to re-apply.

Issues to be Decided

1. Are the Tenants entitled to cancel the One Month Notice?
2. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is the upper suite of a house. This tenancy commenced on August 1, 2018 for a fixed term ending on August 1, 2018, and continued thereafter on a month-to-month basis. Rent is $2,600.00 due on the first day of each month. The Tenants paid a security deposit of $1,300.00.

A copy of the One Month Notice has been submitted into evidence. It is signed by the Landlord and has an effective date of March 11, 2023. The reasons for this notice are:

- Tenant has allowed an unreasonable number of occupants in the rental unit/property/park
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The One Month Notice contains the following details of cause:

> The Tenant has an over use of electricity. Tenant charges personal EV vehicle without landlords approval (illegal use of electricity). Electricity is included for living purposes NOT for charging personal EV. Tenant started since June of 2022 and has not notify landlord. landlord has Hydro bill and witnesses as proof

and evidence and also has been Submitted online via Residential Tenancy Branch.

The Tenants acknowledged receiving a copy of the One Month Notice attached to their door on February 10, 2023.

HL submitted that the rent includes electricity for interior use only, not exterior use such as charging an EV vehicle. HL testified that the Landlord had noticed a 10% increase in the electricity bills and was notified by the downstairs tenant about the Tenants charging an EV vehicle for over six months. HL argued that the Landlord was being overcharged for electricity use not related to basic living. HL argued that the Tenants are breaching the tenancy agreement. HL argued that the Tenants' excessive use of electricity was causing significant interference and unreasonable disturbance.

HL submitted that there are an unreasonable number of occupants in the rental unit, because the Tenants had indicated on a 2019 government shelter form that there were four tenants living in the rental unit. According to HL, the rental unit has two bedrooms and is approximately 1,200.00 sq ft.

HL acknowledged that the tenancy agreement does not contain any term about interior or exterior usage of electricity. HL acknowledged that the Landlord did not give the Tenants any written warning before issuing the One Month Notice.

AG explained he had heard that he could use a regular charging cable to charge his EV vehicle, similar to charging a phone. AG stated that as a result, he tried charging his vehicle at the property 4 or 5 hours for a few nights. AG stated that he ended up receiving only a 2% charge, which is much less than what he receives when he goes to a charging station. AG stated that he called BC Hydro and was told that the costs would be the same as charging a phone. AG testified that he unplugged the charger and never used it again after February 10, 2023.

AG also testified that he had spoken with the Landlord's relative and property manager, DH, about charging the EV vehicle. AG stated that DH agreed to inform the Landlord. AG testified that the Tenants did not receive any warning about electricity usage and were suddenly issued the One Month Notice.

According to AG, when the Tenants first moved into the rental unit, there were four individuals including AG, his mother FFA, and AG's two sisters. AG explained that one

of his sisters moved out of the rental unit approximately 1.5 years ago. The Tenants submitted that there are actually fewer tenants living in the rental unit now than before.

Analysis

1. Are the Tenants entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

> **Form and content of notice to end tenancy**
> 52 In order to be effective, a notice to end a tenancy must be in writing and must
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

(a) not earlier than one month after the date the notice is received, and
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act in form and content. I find the effective date does not comply with the requirements of section 47(2) of the Act. Pursuant to section 53(2) of the Act, I find the corrected effective date of the One Month Notice is deemed to be March 31, 2023.

I find the Tenants were served with a copy of the One Month Notice on February 10, 2023, in accordance with section 88(g) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenants submitted this application on February 17, 2023. I find the Tenants made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice correspond to sections 47(1)(c), (d)(i), (h) of the Act, which state as follows:

> **Landlord's notice: cause**
> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> […]
>
> (c) there are an unreasonable number of occupants in a rental unit;
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> […]
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so; […]

For the reasons that follow, I am not satisfied that the Landlord has demonstrated cause for ending this tenancy as stated in the One Month Notice. I will address each of the stated causes in turn.

a. Unreasonable Number of Occupants

Based on the evidence presented, I find the rental unit is a two-bedroom suite and approximately 1,200 sq ft in size. I find the rental unit was previously occupied by the

Tenants' family of four, consisting of FFA and her three children. I accept the Tenants' evidence that one of the sisters have moved out such that currently there are only three occupants. Given the size of the rental unit, the number of bedrooms available, and the family relationship between the occupants, I am not satisfied that three or four members of the Tenants' family living in the rental unit amounts to an "unreasonable" number of occupants. Accordingly, I conclude that the Landlord has not established cause for ending this tenancy under section 47(1)(c) of the Act.

b. Significant Interference or Unreasonable Disturbance

I find the Landlord has not submitted evidence such as hydro bills to show that there has been an increase in electricity consumption. Furthermore, I find the Landlord did not submit evidence to prove that any increase in electricity consumption would have been caused by the Tenants' EV charging. I note there is insufficient evidence to suggest that the rental unit is separately metered from the lower suite.

Moreover, even if I were to accept the Landlord's claim that the Tenants' EV charging has caused the Landlord's electricity costs to increase by 10%, I would not find that this means the Tenants have "significantly interfered with or unreasonably disturbed" another occupant or the Landlord. I find it is normal for utility costs to fluctuate and utility costs may increase even with reasonable usage.

I conclude that the Landlord has not established cause for ending this tenancy under section 47(1)(d)(i) of the Act.

c. Breach of Material Term and Failure to Correct

According to Residential Tenancy Branch Policy Guideline 8. Unconscionable and Material Terms, a "material term" of the tenancy agreement is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In this case, I find it is undisputed that the cost of electricity is included in the rent. However, I find there is insufficient evidence that the parties had agreed to any other terms about electricity usage, such as terms about interior versus exterior use of electricity, how much electricity consumption would be considered overuse by the Landlord, or what happens in the event of electricity overuse.

Based on the foregoing, I find the Landlord has not demonstrated that the Tenants have breached any material term of the tenancy agreement. Accordingly, I conclude that the Landlord has not established cause for ending this tenancy under section 47(1)(h) of the Act.

Since the Landlord has not proven any of the causes stated on the One Month Notice, I order that the One Month Notice be canceled and of no force or effect.

2. Are the Tenants entitled to reimbursement of the filing fee?

As the One Month Notice has been set aside on this application, I grant the Tenants reimbursement of their filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct $100.00 from rent payable to the Landlord for the month of May 2023 or another month of the Tenants' choosing.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenants are authorized to recover their filing fee from the Landlord through a one-time deduction of **$100.00** from rent payable to the Landlord.

The Tenants' remaining claims are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

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: April 27, 2023

Residential Tenancy Branch