



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes LRE, OLC, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants December 05, 2022 (the “Application”). The Tenants applied:

- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord and Co-landlord appeared at the hearing with C.L. to assist (the “Landlords”). I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties provided evidence for the hearing. I addressed service of the hearing package and evidence. The Landlords said they did not receive the hearing package or evidence. However, the Landlords agreed to proceed with the hearing and agreed to the Tenants’ evidence being admitted. The Tenants confirmed receipt of the Landlord’s evidence.

The parties were allowed to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
2. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants said there have been four written tenancy agreements in this matter. The Landlords did not know how many written tenancy agreements there were. There was no issue that there is a tenancy agreement between the parties.

The Tenants asked for an order that the Landlord can only enter the rental unit one day per week during the week for the purpose of showing the rental unit to potential buyers. The Tenants said they are in poor health and the Landlord is still showing the unit when they are sick and in bed. The Tenants also said the Landlord shows the unit on holidays.

The Landlords said the Tenants have only agreed to the Landlord showing the rental unit three or four times since it was listed for sale. The Landlords said they should be able to show the unit in accordance with the *Residential Tenancy Act* (the "Act").

The Tenants asked for an order that the Landlord cannot file an Application for Dispute Resolution or try to evict them based on strata fines that were previously ruled on.

The parties had been before the RTB previously based on a One Month Notice issued to the Tenants for strata fines. The prior Arbitrator cancelled the One Month Notice (file ending 893), stating:

The Landlord testified that the strata council for the rental property has charged the Landlord \$19,000.00 in fines due to allegations that the Tenants are being a nuisance and operating a business out of the rental unit. The allegations include operating an escort business and filming an adult movie in the pool area of the property. The Landlord testified that the Tenants refuse to pay the fines.

The Landlord issued the 1 Month Notice because the fines have not been dealt with. The Landlord testified that the Landlord cannot prove the allegations made from the strata...

The Landlord cannot prove the allegations made against the Tenants from the strata council.

While I recognize that the allegations of nuisance are directly related to fines, I find that the reason for the issuance of the 1 Month Notice is more about the Tenants' failure to pay fines levied against the owner, than a concern over the Tenants' behaviour. The Landlord testified that they asked the strata for a hearing because they do not believe the reasons are valid.

I find that the Landlords position that the Tenants are responsible to pay the fines is not reasonable considering that the Landlords do not believe that the reasons behind the fines are valid and they have no proof of the allegations made against the Tenants...

The Tenants said the Landlord is still harassing them about the fines referred to in the above Decision. The Tenants submitted that the prior Arbitrator found they are not liable to pay the fines and therefore the Landlord cannot ask them to pay the fines and they do not have to pay the fines. The Tenants said the Landlord tells them that if they do not pay the fines, they will proceed to evict them or will sell the rental unit.

The Landlords said they are allowed to issue another One Month Notice to the Tenants. The Landlords said it is emails from the Tenants that resulted in the Landlords asking further about the fines because the Tenants said after the last hearing that they wanted to work to resolve the issue. The Landlords did not dispute that the prior Arbitrator found the Tenants are not responsible to pay the fines and said the reason the Landlord continued to bring this up is because the Tenants offered to resolve the issue with them. The Landlords confirmed they understand the Tenants are not responsible to pay for the fines addressed in the prior Decision.

In reply, the Tenants raised issues about the strata.

Analysis

Under rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove they are entitled to the orders sought. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Landlord's right to enter the rental unit is set out in section 29 of the *Act* and explained in RTB Policy Guideline 07.

I am not satisfied based on the evidence provided that the Landlord has entered the rental unit unlawfully or unreasonably. The parties disagreed about this and the documentary evidence does not support the Tenants' position.

The Landlord must comply with section 29 of the *Act* about entering the unit, as all landlords must. The Landlord should also review RTB Policy Guideline 07 and ensure they are complying with this.

The request to further limit the Landlord's right to enter the rental unit is dismissed without leave to re-apply.

The Landlord previously issued a One Month Notice based on strata fines being issued due to the Tenants. The prior Arbitrator found the Landlord had not proven the grounds for the One Month Notice and cancelled the One Month Notice. The Landlord cannot re-issue a One Month Notice for the same reason. The Landlord can issue a One Month Notice for different or additional reasons.

It is arguable that the prior Arbitrator found that the Tenants are not responsible to pay the strata fines given the paragraph:

I find that the Landlords position that the Tenants are responsible to pay the fines is not reasonable considering that the Landlords do not believe that the reasons behind the fines are valid and they have no proof of the allegations made against the Tenants.

At the hearing, I understood both parties to agree that the prior Arbitrator found the Tenants do not have to pay the fines and that the Tenants are not responsible for paying the fines. The Landlords agreed this is their understanding. The Landlords agreed they would not continue to ask the Tenants about the fines. I told the Tenants to stop offering to resolve the issue with the fines if they do not want the Landlord following up about this.

As explained to the parties at the hearing, the Landlord can sell the rental unit whenever or for whatever reason they want. The unit is the Landlord's property and they can sell it. The *Act* does not limit when or why the Landlord can sell the unit.

Further, the Landlord selling the rental unit is not a punishment as the Tenants seem to believe. The Landlord cannot end the tenancy because they are selling the rental unit. Even if the unit is sold, the tenancy simply carries on with the new owner, the tenancy does not end. The only situation where the Landlord selling the unit may result in the tenancy ending is if the purchaser intends in good faith to move into the rental unit, in which case they could issue the Tenants a Two Month Notice under section 49 of the *Act*. However, this is a right a purchaser has under the *Act* and they are entitled to exercise this right.

As explained to the parties at the hearing, the RTB only has jurisdiction to deal with issues between landlords and tenants and cannot make orders binding the strata of this building.

Given the Tenants have been partially successful in their claim as it relates to clarifying that the Landlord cannot re-issue a One Month Notice for the same reason the prior One Month Notice was issued for, the Tenants are awarded \$100.00 for the filing fee and can deduct this from their next rent payment.

Conclusion

The request to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed without leave to re-apply.

I confirm that the Landlord cannot re-issue a One Month Notice for the same reason the prior One Month Notice was issued for (as dealt with in file ending 893).

The Tenants can deduct \$100.00 from their next rent payment.

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: April 19, 2023

Residential Tenancy Branch