



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

The Tenants, by way of application and amendments, seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on July 17, 2022 (the “July One-Month Notice”);
- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on October 5, 2022 (the “October One-Month Notice”);
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

This matter had been originally scheduled for hearing on December 9, 2022 but was adjourned due to issues with service of the Tenants’ amendments. P.P. appeared as the Tenant. A.Y. appeared as the Landlord’s agent and was joined by G.R. who assisted the agent in her submissions.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the reconvened hearing, I enquired if the parties had served one another and received the other sides application materials. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenants’ Monetary Claim

Rule 2.3 of the Rules of Procedure requires claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the

application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In this instance, the primary issue is whether the notices to end tenancy issued by the Landlord are enforceable. The monetary claim, which is for compensation in preparation of this hearing, is not sufficiently related to whether the one-month notices are enforceable. Further, both claims have alternating onuses of proof: the Landlord bears the onus of proving the notices to end tenancy were properly issued and the Tenants bearing the onus of proving the monetary claim.

Given this, I sever the Tenants monetary claim with leave to reapply. The hearing proceeded strictly on the issue of the enforceability of the July One-Month Notice and the October One-Month Notice.

Issues to be Decided

- 1) Is the July One-Month Notice enforceable?
- 2) Is the October One-Month Notice enforceable?
- 3) If either notice to end tenancy is enforceable, is the Landlord entitled to an order of possession?
- 4) Are the Tenants entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on February 15, 2021.
- Rent of \$1,928.00 is due on the 15th day of each month.
- The Tenants paid a security deposit of \$950.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the parties.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notices to end tenancy pursuant to the following sections:

- | | |
|---------------|--|
| 47(1)(d)(iii) | Put the Landlord's property at significant risk |
| 47(1)(f) | Caused extraordinary damage |
| 47(1)(g) | Tenant failed to undertake repairs within a reasonable time |
| 47(1)(h) | Tenant breached a material term and failed to correct in a reasonable time |
| 47(1)(h) | Tenant knowingly gave false information to a prospective tenant or buyer |

Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

I) July One-Month Notice

The Landlord's agent advises that the July One-Month Notice was posted to the Tenants' door on July 17, 2022. The Tenant acknowledges its receipt on July 17th. I find that the July One-Month Notice was served in accordance with s. 88 of the *Act* and was received on July 17th. Upon review of the information on file, I find the Tenants filed their application disputing the notice on July 18, 2022 such that they complied with the 10 day time limit imposed by s. 47(4) of the *Act*.

I am provided with a copy of the July One-Month Notice, which describes the causes for ending the tenancy as follows:

<p>Details of the Event(s):</p> <p>1. May 2022, the Tenant requested the landlord to fix the clog in the shower they caused saying if landlord does not agree to send people to fix it water would overflow to the ground out of bathroom. The Landlord had no choice but sent a handyman there immediately. May 11, 2021, the handyman fixed and send an invoice of \$150 for the urgent call by the tenants but tenants rejected to pay to the handyman and made the landlord to pay that bill. Landlord sent several request to the tenants but tenants replied they would not pay. This is a violation of section 9. 2) of the Residential Tenancy Agreement started from Feb 15, 2021. After being requested to pay for several time, tenants still rejected to as of July 16, 2022.</p> <p>2. In June, tenants posted in public landlord's home address and phone number which violated the privacy law and damaged landlord/agent reputation. After being requested to remove this posting, as of July 16, tenants still have that posting in public to everyone.</p> <p>July 16, 2022, tenants provided inspection with a witness from the landlord, [REDACTED]. It was discovered the tenants were hanging wet clothing/towels beside the bedroom window to dry naturally which increased high humidity of that area and bedroom. It was noticed that three sides of walls in that area have built up significant mold to the bedroom and the house for long time. Tenants did not take any action to repair. On the inspection day, tenants rejected to fix or pay for the repair but requested landlord to buy a dehumidifier for them. All the pictures of the mold are sent to the tenants with this notice. The condition of the bathroom was also bad during the inspection and tenants said they have to intention to clean it before move out. Landlord need to end the tenancy to avoid further damage to the house from the irresponsible tenants and seek remedy ASAP.</p>

I have redacted personal identifying information from the description above in the interest of the parties' privacy.

The Landlord's agent describes that the shower was "pretty bad" in that it was unclean with dirty grout. I am also told by the Landlord's agent that the shower drain was plugged, that the Landlord retained a repairperson to clear the drain, and that the Tenants refused to pay for the drain clearing afterwards. The Landlord's evidence contains an invoice for \$150.00 and photographs of the shower.

The Tenant confirms that they notified the Landlord approximately two to three months into the tenancy that the shower was not draining well. The Tenant argues that the Landlord is improperly seeking compensation for the drain clearing as the blockages predated their tenancy.

With respect to this issue raised by the Landlord, it is unclear to me how a dirty shower or a blocked drain constitutes extraordinary damage to the rental unit, placing the property at significant risk, or constituting a repair that has not been done by the Tenant after being provided a reasonable time to complete the repair. I have reviewed the photographs provided to me of the cleanliness of the shower. The shower is not damaged.

Further, I have been provided with no evidence to support a finding that the Tenants caused and are therefore responsible for the issues mentioned. I note that s. 32(4) of the *Act* specifies that tenants are not responsible for reasonable wear and tear. Grout discolouration from use of a shower would, in my view, constitute reasonable wear and tear.

Similarly, the blockage in the drain cannot be clearly attributed to the Tenants. I accept that this was reported early into the tenancy, such that it is likely that the issue predates the Tenants' occupation of the rental unit. Further, a drain blockage through normal use, by the build up of hair for example, does not constitute extraordinary damage. I find that the Landlord has failed to establish the July One-Month Notice was properly issued on this ground.

The One-Month Notice also makes mention of the Tenants posting the Landlord's personal address in public. The Tenant confirms he left a review at RateMyLandlord and that he left the mailing address, as given to him, in the review. The Landlord's agent

says that the tires for the Landlord's car were slashed following the posting of the address.

To be clear, I do not condone the sharing a personal information online in the manner admitted by the Tenant. Just as it would be inappropriate for a landlord to post personal information on a tenant online, it is similarly inappropriate for a tenant to do so.

However, the notice was not issued under s. 47(1)(d)(ii) of the *Act*, which would be that the Tenants seriously jeopardized a lawful right or interest of the Landlord, such as the Landlord's privacy interest. To be sure, an individual landlord does have a privacy interest that ought to be respected by their tenant. Breach of privacy could conceivably result in cause for ending a tenancy depending on the circumstances.

Despite this, I am not provided with a copy of the bad review, such that I cannot confirm whether there was a privacy breach and, if so, whether it was serious. Further, there is no specific prohibition in the *Act* that prevents a tenant from leaving a bad review online, provided privacy interests for the individuals involved are respected. I find that I have insufficient evidence to support this ground for ending the tenancy. I further note that the Landlord did not issue the July One-Month Notice on the basis of s. 47(1)(d)(ii) of the *Act* such that the alleged privacy breach does not clearly correspond with the causes listed in the notice.

The final point raised in the July One-Month Notice is the issue of the mould. The Landlord's agent says that Tenants when asked to repair the mould refused to do so. I am told by the parties that the issue was discovered during an inspection by the Landlord on July 16, 2022.

The Tenant says that he notified the Landlord's agent of the mould during the inspection on July 16, 2022. The Tenant also says that they were given a letter on July 16, 2022, a copy of which is in the Landlord's evidence, outlining that they had seven days to repair the mould. Review of the letter shows there is no mention of mould by the Landlord. The Tenant further says that they conducted a spot cleaning of the mould such that issue is no longer present.

The issue with this ground is that the Landlord has failed to establish that the Tenants are, in fact, responsible for the mould. It is just as likely that the mould developed from water leaking or moisture ingress from the building envelope. Indeed, on the submissions made before me, there was no clear evidence to support what caused the mould to accumulate. This may just as likely be a repair issue to be address by the

Landlord itself. I find that the Landlord has failed to establish that the Tenants caused extraordinary damage to the rental unit or put the property at significant risk due to the mould issue.

Given the above, I find that the Landlord has failed to show that the July One-Month Notice was issued in compliance with the *Act*. The notice is hereby cancelled.

II) October One-Month Notice

The Landlord's agent advises that the October One-Month Notice was posted to the Tenants' door on October 15, 2022. The Tenant acknowledges its receipt, though cannot recall when. I find that the October One-Month Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant. Upon review of the information on file, I find the Tenants filed their amendment disputing the notice on October 18, 2022 such that irrespective of when the October One-Month Notice was received, they complied with the 10 day time limit imposed by s. 47(4) of the *Act*.

The October One-Month Notice provided to me details the cause for ending the tenancy as follows:

Details of the Event(s):

2021, summer, tenants lived there for 6 months and told us they wanted to move out, so landlord decided to sell the property but tenants were not cooperative about the showing by allowing only 4-6pm on a certain day they chose. Therefor the Realtor couldn't arrange open house. Landlord missed the best time to sell.

2022, august, landlord sent a formal notice to tenants to let the realtor do an open house. Tenants did not respond but on the day of showing, when the realtor and potential buyers came, tenants rejected to let them enter. Landlord thus again missed the last time to sell before the interest rate went higher and higher for potential buyers.

The Landlord's agent described that the Tenants refused access to the rental unit and set conditions on viewing that made marketing the rental impossible for the Landlord. I am told of an incident that occurred in August 2022 in which the Tenants refused access to the realtor prospective buyers.

The Tenant indicates that they were not given contact information for the realtor and that they were reluctant to have someone come through the rental unit whom they did not know. As I understand, the Landlord's agent was there on the incident in question but that she did not wish to go through the rental unit at that time. The Tenant says that they provided a letter to the Landlord the day after emphasizing that they were not blocking access and wanted to reschedule the viewing.

I have reviewed the letter provided by the Tenant dated August 22, 2022. In it, it links a quote from the Residential Tenancy Branch specifying that when a rental unit is being shown to prospective buyers, the landlord or landlords agent must be present.

The October One-Month Notice lists as its causes that the Tenants breached a material term of the tenancy agreement and did not correct the breach within a reasonable time and that the Tenant knowingly gave false information to prospective buyers. Nothing told to me by the Landlord's agent supports a finding that the Tenants either breached a material term of the tenancy agreement or knowingly gave false information to a prospective buyer. The issue with respect to access described within the notice to end tenancy and at the hearing does not correspond with the causes listed in the notice, such that I cannot find that it was properly issued. I find that the October One-Month Notice must also be cancelled.

Conclusion

I grant the relief sought by the Tenants' and hereby cancel the July One-Month Notice and the October One-Month Notice, neither of which are of any force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As set out above, the Tenants' claim for monetary compensation is dismissed with leave to reapply.

As the Tenants were successful, I find they are entitled to their filing fee. I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenant's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenants withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of 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: April 19, 2023

Residential Tenancy Branch