



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 28, 2022, the tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated December 23, 2022, (the One Month Notice);
- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings, and Rule 7.4 requiring evidence to be presented.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matters

As the tenants failed to serve on the landlords documents uploaded to the Residential Tenancy Branch on April 13, 2023, I will not consider those materials in my decision.

The landlord has submitted as evidence documentation from a date following the service of the One Month Notice on December 23, 2022. I will be considering only evidence from the date of the Notice and earlier.

The Residential Tenancy Branch's Rules of Procedure 2.3 states:

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.

As the tenants' claim for an order for the landlord to comply relates to a parking space and is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenants' claim for an order for the landlord to comply with the Act, regulation, or the tenancy agreement.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice? If not, is the landlord entitled to an order of possession?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Those present agreed on the following particulars of the tenancy. It began February 15, 2011; rent is \$1,785.00, due on the first of the month; and the tenants paid a security deposit of \$862.50, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified they served the One Month Notice on the tenants by posting it to the door on December 23, 2022. The tenants confirmed they received the Notice on December 23, 2022.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reasons for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reasons for the Notice are:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the property.

The Details of the Events section of the One Month Notice refers to an attached page, which the parties agreed was served along with the Notice. The additional page refers first to the tenants approaching and disturbing other tenants in the complex as the subject tenants attempt “to make the landlord or management company of the entire property look bad,” and references section 47(1)(d)(i) of the Act, which states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. This corresponds to the first reason indicated on page 2 of the One Month Notice.

The additional Details page refers second to the subject tenants telling other tenants how considerably lower the subject tenants’ rent is, discouraging other tenants to increase their rent, claiming the landlord is acting illegally, and “trying to cause a revolt of the tenants against the landlord.” This second entry references section 47(1)(e)(iii) of the Act, which states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord. This does not correspond to any of the reasons indicated on page 2 of the One Month Notice.

The additional Details page refers lastly to the subject tenants not complying with strata bylaws, creating trouble with parking spaces, and failing to remove snow by their unit, endangering the safety of themselves and others, and potentially causing an increase in the strata insurance or cancellation of the insurance. This third entry refers first to section 47(d)(ii) of the Act, which states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. This corresponds to the second reason indicated on page 2 of the One Month Notice. The third entry also refers to section 47(d)(iii) of the Act, which states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk. This does not correspond to any of the reasons indicated on page 2 of the One Month Notice.

The landlord testified they served the One Month Notice on the tenants for three reasons:

- 1) the tenants act illegally in attempting to turn other tenants against the landlord;
- 2) the tenants do not stop at the parking gate, endangering people in the complex, and putting cars and bikes at risk, against strata bylaw and the Act; and
- 3) the tenants fail to remove snow from in front of their unit, against strata bylaw and the Act.

The landlord provided extensive testimony on how the tenants have approached and disturbed other tenants in the complex, significantly interfering with them and unreasonably disturbing them as they attempt to make the landlord look bad. The landlord testified the tenants are telling others they pay very low rent; discouraging other tenants to accept rent increases, claiming they are illegal; and telling other tenants not to pay rent. The landlord submitted the tenants have approached almost all the tenants in the complex, and that this has resulted in tenants giving notice, asking for rent decreases, and refusing rent increases.

Submitted as evidence by the landlord are letters from other owners and landlords, stating that one of the tenants is speaking poorly about them to their tenants. A letter from one owner, RP, states that many times the tenant has started discussions with tenants and created trouble for the landlords. Another owner, of 16 units, states that the tenant has approached their tenants many times, bothering their tenants and badmouthing the landlord. The letter, signed as a numbered company, states the tenant may think that all the complex units are owned by one landlord, when there are many different owners, and asks the subject unit landlord to evict the tenant if things don't change. Another letter, signed by a corporation, states that the tenant is "going around the building speaking bad about us to our tenants," and asks the landlord to evict the tenant if the behaviour continues. Another letter, to the strata council from the same corporation, states that "the landlord from [the subject unit] has nothing to do with our company." The landlord testified there are about 15 different landlords in the complex.

The landlord referenced Policy Guideline 32. *Illegal Activities*, and submitted that the subject tenants' illegal harassment is jeopardizing the landlords' rent.

The tenants responded that they do not have time to approach and disturb other tenants as described by the landlord. The tenants submitted that the landlord threatened to evict them if they did not accept a rent increase. The tenants testified they have only spoken with the tenants around them about their concerns, and did not knock on doors or

distribute flyers. The tenants submitted that the letters from other landlords do not reference specific unit numbers, and that the tenants think some of them were typed by the same person.

Regarding the landlord's claim that the tenants do not stop at the parking gate, endangering people in the complex and putting property at risk, the landlord submitted that the tenant is aware she needs to stop and wait for the gate to close. The landlord stated the tenant did not wait for the gate on December 22, 2022. As previously mentioned, I will not consider evidence from after service of the One Month Notice on December 23, 2022.

The landlord referred me to a video which is not in evidence. Submitted as evidence is a photo of a large yellow sign on a parking gate, which says to "stop & wait until gate closes fully before proceeding." Also submitted are photos of breached chain link fences in the parking area. The landlord submitted that the tenant's behaviour is putting people and the property at risk, and that the photos are from other times people broke in. The landlord testified that the tenant's failure to wait for the gate is a violation of the strata bylaw.

Regarding snow removal, the landlord submitted as evidence multiple reminder emails to residents, spanning 2020 to 2022, which state that residents are responsible for clearing the snow from around their unit. The landlord submitted as evidence numerous photos of the tenant's outdoor area and stairs covered in snow. The landlord submitted that the tenants' failure to remove the snow as required is endangering everyone in the complex.

The tenants testified that they always remove the snow in the morning because they have an elderly babysitter arrive each day, but that more snow sometimes accumulates while they are away for the day. The tenants testified that they sometimes also shovel their neighbour's snow.

Analysis

Based on the testimony of those present, I find the landlord served the tenants the One Month Notice on December 23, 2022, in accordance with section 88 of the Act, and that the tenants received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reasons for ending the tenancy, and is in the approved form.

I find the landlord's One Month Notice internally inconsistent as page 2 of the Notice identified three particular reasons, but the supplementary page describing the Details of the Events referred to two additional reasons not indicated on page 2 of the Notice. However, I note that the tenants did not raise this as a source of confusion.

The standard of proof in a dispute resolution 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 usually on the person making the claim. As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

Section 47(1)(d)(i) of the Act states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has submitted that the tenants are interfering with other tenants and landlords by communicating with the tenants of other landlords. However, I find this portion of the Act references another occupant or the landlord of the residential property, not other landlords or their tenants. I find the landlord has provided insufficient evidence to support this part of their claim. Had the landlord provided, for example, evidence from multiple occupants of a building the landlord owns, each stating a way in which the tenants are significantly interfering with or unreasonably disturbing them, I would give that evidence considerable weight. Or, if the landlord had provided compelling evidence of a way in which the tenants have significantly interfered with or unreasonably disturbed the landlord, such as harassing the landlord so he could not collect rent from other tenants, that would also carry considerable evidentiary weight.

Section 47(d)(ii) states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The landlord's arguments relevant to this portion of the Act are their claims that the tenants failed to clear snow from around their unit and failed to wait for the parking gate.

The landlord has provided testimony and photos in support of their claim that the tenants do not clear the snow as required by the strata, despite numerous reminder letters, also submitted as evidence. However, the tenants testified that due to the early daily arrival of their elderly babysitter, they always remove the snow in the morning, but that more snow sometimes accumulates later in the day. As the two parties have provided equally plausible accounts regarding the tenants' actions on snow removal, I find the landlord has failed to meet their evidentiary burden to prove this portion of their claim.

The landlord has submitted that the tenants do not follow the posted sign to stop at the parking gate, thereby endangering residents, and putting property at risk. The landlord stated the tenant did not wait for the gate on December 22, 2022, and referred to events following service of the One Month Notice, which I will not consider in the decision. I find the landlord has submitted insufficient evidence to prove that this is a reason to end the tenancy.

Section 47(1)(e)(ii) states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The landlord submitted that the tenants acted illegally in attempting to turn other tenants against the landlord, and submitted in support letters from other landlords. I find that this section of the Act is referring to a landlord, tenant, and occupant of a property, and does not contemplate or apply to multiple landlords of other properties. Also, I find the landlord has provided insufficient evidence to prove the tenants have engaged in any illegal activity, much less illegal activity warranting eviction. The parties agree the tenants have spoken to other renters in the complex about their tenancy concerns, which is not an illegal act. Policy Guideline 32. *Illegal Activities* provides that the term "illegal activity" would include a serious violation of federal, provincial or municipal law, and sets out examples of illegal activities which would justify termination of a tenancy.

The examples include operation of a chemical drug manufacturing operation or running a brothel in the rental unit.

Based on the preceding, and on a balance of probabilities, I find the landlord is not entitled to an order of possession because the landlord has failed to prove any of the three reasons indicated on the One Month Notice.

Therefore, the One Month Notice is cancelled.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenants' application for an order to cancel a One Month Notice to End Tenancy for Cause is granted. This tenancy will continue until it is ended in accordance with the Act.

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: May 03, 2023

Residential Tenancy Branch