



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RR, RP, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed application regarding a residential tenancy dispute.

On January 22, 2023 the tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated January 12, 2023, (the One Month Notice);
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit, having contacted the landlord in writing;
- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

On February 23, 2023 the landlords applied for:

- an order of possession, having served the One Month Notice; 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

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' claims for a rent reduction, an order for repairs, and an order for the landlord to comply are not directly related to the central issue of whether the tenancy will continue, I dismiss these claims with leave to reapply.

Issues to be Decided

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

Background and Evidence

While I have considered the presented 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 March 1, 2022; rent is \$1,800.00, due on the first of the month; and the tenants paid a security deposit of \$875.00 and a pet damage deposit of \$875.00, which the landlords still hold.

A copy of the One Month Notice was submitted as evidence. The landlords testified they served the One Month Notice on the tenants by putting it in the mailbox on January 12, 2023. The tenants confirmed they received the Notice, but were unsure on what date.

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

The One Month Notice indicates the reason for the Notice is that 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 Details of the Events section of the One Month Notice states that the tenants did not cooperate with the landlords regarding repairs the tenants had requested, that some days the tenants did not reply with their availability, that the tenants provided the landlords with incorrect information, that the tenants threatened “to take actions on landlords for dispute and falsely [sic] accused landlords,” and that the tenants unreasonably harassed the landlords by saying that text messages and emails are not a valid way of communication.

The landlords began their testimony by stating that the applicants were good tenants, and that the only problem was that they did not communicate properly regarding repairs they reported.

The landlords provided additional testimony, referring to incidents in which the tenants did not get back to the landlords with their availability and provided the landlords with incorrect information about repairs.

The landlords submitted that the tenants threatened and harassed them, referring to a text message in evidence. In the message, the tenants question why the landlords are attempting to evict them, state they will dispute the eviction notice, and tell the landlords they will apply for dispute resolution if the landlords do not make repairs to the unit.

The tenants submitted that they need to receive proper notice of entry from the landlords when repairs will be done. The tenants testified that the landlords are also inconsistent in their communication with the tenants, and ignore texts or do not read them completely. The tenants testified they asked the landlords to provide physical notices of entry. The tenants testified the landlords have failed to make repairs within a reasonable period.

Analysis

Based on the testimony of those present, I find the landlords served the tenants the One Month Notice on January 12, 2023, in accordance with section 88 of the Act, and deem it received by the tenants on January 15, 2023, pursuant to section 90.

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 reason for ending the tenancy, and is in the approved form.

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 applicants have been good tenants, except that they did not communicate properly regarding repairs they reported.

The landlords referred to incidents when the tenants did not provide the landlords with their availability and provided the landlords with incorrect information about repairs.

The landlords submitted that the tenants threatened and harassed them, however the landlord's evidence for this serious claim is a text in which the tenants question why the landlords are attempting to evict them, state they will dispute the eviction notice, and tell the landlords they will apply for dispute resolution if the landlord does not make repairs to the unit. One party telling another that they will apply for dispute resolution is not what I would consider a threat, and it is certainly not harassment.

The tenants testified that they have also experienced communication challenges with the landlords.

Based on the preceding, and on a balance of probabilities, I find the landlords are not entitled to an order of possession, because the landlord has failed to prove the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

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.

As the landlords are unsuccessful in their application, I decline to award them the filing fee they paid.

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.

The landlords' application is dismissed.

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 05, 2023

Residential Tenancy Branch