



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, RR, RP, LRE, LAT, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants January 23, 2023 (the "Application"). The Tenants applied:

- To dispute a One Month Notice to End Tenancy for Cause dated January 18, 2023 (the "Notice")
- To dispute a rent increase that is above the amount allowed by law
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For authorization to change the locks to the rental unit
- To recover the filing fee

The Tenant and Landlord appeared at the hearing.

I have decided the dispute of the Notice and request to recover the filing fee. The remaining claims are dismissed with leave to re-apply under rule 2.3 of the Rules of Procedure (the "Rules").

Both parties provided evidence for the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord said they did not receive evidence from the Tenants. The Landlord said their evidence was not sent to the Tenants as evidence for the hearing.

I heard the parties on whether the Landlord's evidence should be admitted or excluded given it was not served on the Tenants as evidence for the hearing as required by rule 3.15 of the Rules. The Tenant said the evidence should be excluded. The Landlord said the evidence should be admitted. I excluded the evidence under rule 3.17 of the Rules because I found it would be unfair to consider it when it was not served on the Tenants so that they knew what the Landlord had provided to me and what the Landlord was relying on at the hearing.

The only relevant documentary evidence provided by the Tenants was the Notice which I have considered.

The parties were given an opportunity to provide relevant evidence and submissions. I have considered the admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

There is no dispute that there is a tenancy agreement between the parties.

The Notice was provided. The grounds for the Notice are:

1. Repeated late payment of rent.
2. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
3. Tenant has not done required repairs of damage to the unit or property.

The Details of the Events state:

Details of the Event(s):

I have been the property manager for this suite since September 2022 and the tenants have been late paying rent 3 of the past 5 months (Sep 2022, Dec 2022, Jan 2023). The tenants have also accumulated a number of fines since March 2022 that have yet to be paid. (Including allowing someone to move into the unit without permission, spitting in the elevator, vandalizing and theft of packages, harassing other residents and excessive noise causing disturbances to neighbouring units). I have attended a Strata meeting at the end of November 2022 to discuss these fines with the Strata counsel. Multiple people, including the Strata members themselves, have complained on the behaviours of the tenants. The total fines incurred total \$900. I have emailed the tenants the details and copies of the Strata fines on December 17th 2022.

The Landlord testified as follows.

The Tenants were late paying rent September and December of 2022, as well as January of 2023.

The Tenants have damaged blinds in the rental unit that have not been repaired as requested by the owner.

There have been multiple complaints made about the Tenants by other tenants of the building. The Tenants have been issued strata fines for excessive disturbance and noise during the day and night. The Tenants have vandalized packages in the mail room and stolen packages from the mail room. Police were involved regarding the Tenants stealing packages, which is an arrestable offence and grounds for the Notice.

The Tenant testified as follows.

The Tenants have only paid rent late twice.

The Tenant told the owner they would fix the damaged blinds before they moved out of the rental unit and the owner agreed to this.

The Tenants have not interfered with or disturbed anyone. The Tenants are facing discrimination from other tenants of the building who simply want them out. The Tenants are being blamed for things they are not doing. There is no evidence showing the Tenants have done the things they are alleged of doing.

Analysis

The Notice was issued under section 47 of the *Residential Tenancy Act* (the “*Act*”).

The Landlord has the onus to prove the grounds for the Notice under rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are 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 their onus of proof.

The Landlord said the Tenants paid rent late three times in 2022 and 2023. The Tenant said they paid rent late twice. There is no admissible documentary evidence before me to support the Landlord’s testimony. Given this, I am only satisfied that the Tenants paid rent late twice. Two late rent payments are not grounds for the Notice given RTB Policy Guideline 38 which states that three late rent payments are the minimum to justify ending a tenancy for repeated late payment of rent. The Landlord has failed to prove this ground for the Notice.

Damaged blinds are not grounds to end this tenancy for two reasons. First, this is a very minor issue that does not justify ending the tenancy under section 47 of the *Act*. Second, the blind issue is not outlined in the Details of the Events as a reason for the Notice.

The Landlord says the Tenants have caused significant interference and unreasonable disturbance to other tenants of the building. The Tenant denies this. There is no admissible evidence before me to support the Landlord’s testimony. The Landlord has failed to prove this ground for the Notice.

Given the above, the Landlord has failed to prove the grounds for the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants are entitled to recover the \$100.00 filing fee under section 72(1) of the *Act*. The Tenants can deduct \$100.00 from their next rent payment under section 72(2) of the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: May 26, 2023

Residential Tenancy Branch