



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DOLE ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT
 OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on January 27, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice); and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application that was filed by the Landlord under the Act on March 8, 2023, seeking:

- An order of possession based on the One Month Notice; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 am on May 23, 2023, and was attended by the Tenants and the agent for the Landlord BS (Agent). All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Preliminary Matters

Naming of Parties

The parties agreed that the Landlord under the tenancy agreement is a corporation, and that the corporate Landlord should have been named as the respondent rather than the Agent BS. With the consent of the parties, the Application was amended to properly name the Landlord and remove BS as a named respondent.

Service of the Notices of Dispute Resolution Proceeding

The Tenants acknowledged receipt of the Landlord's NODRP and although BS acknowledged receipt of the Tenants' Notice of Dispute Resolution Proceeding (NODRP) on behalf of the Landlord, they took issue with the date of service, which was April 13, 2023. The Tenants stated that the NODRP was originally sent by registered mail on February 8, 2023, but due to their dyslexia, they transposed some digits in the address, and therefore it could not be delivered and was returned to them. The Tenants stated that once it was returned, they re-sent it to the correct address by registered mail on April 11, 2023.

The Tenants provided me with the registered mail tracking numbers for the packages and with the consent of the parties, I checked the tracking information online. As a result, I am satisfied that the events occurred as set out above, and that due to a clerical error caused by a disability, the original registered mail was improperly addressed and therefore not received. I am also satisfied that this registered mail was sent within the timeline set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

The Agent also acknowledged service on April 13, 2023, more than a month prior to the hearing, was able to submit evidence for my consideration in response to it, and was already aware of the hearing date and time, as the Landlord's Application was crossed with the Tenants' Application, and they were set down to be heard together at the same hearing. Further to this, both Applications deal with the same One Month Notice. As a result, I am satisfied that any prejudice suffered by the Landlord due to the delayed receipt of the Tenants' NODRP, is far outweighed by the prejudice that would be suffered by the Tenants in failing to accept their Application for consideration. Pursuant to section 71(2)(b), I therefore order that the NODRP received by the Agent on April 13,

2023, is sufficiently served for the purposes of the Act, and the hearing of both Applications proceeded as scheduled.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

Is the Landlord entitled to an order of possession pursuant to section 55 of the Act?

Are the parties entitled to recovery of their filing fees?

Background and Evidence

The parties agreed that a One Month Notice was properly served and disputed by the Tenants on time.

The One Month Notice in the documentary evidence before me is on the Residential Tenancy Branch (Branch) form, is signed and dated January 24, 2023, has an effective date of February 28, 2023, and states that the notice has been issued because:

- The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property; and
- The tenant has not done required repairs of damage to the unit.

The parties agreed that the Tenants had caused damage to the rental unit. However, they disagreed about whether this damage has subsequently been repaired, and whether it was significant enough to constitute grounds for ending the tenancy under section 48(1)(f) of the Act.

The Agent argued that after an inspection of the rental unit on December 6, 2022, they were shocked by the state of the rental unit, as there were holes in several doors and a wall, as well as carpet stains. The Agent stated that the Tenants were issued a letter, a copy of which was provided for my consideration, wherein they were advised that they had until December 22, 2022, to hire a contractor to complete the repairs. The Agent stated that the rental unit was re-inspected on December 12, 2022, and additional damage was noted. The Agent stated that although the Tenants attempted to hire a contractor, that contractor was not fully aware of the scope of work, and did not have the proper amount of liability insurance. The Agent acknowledged that the Tenants ultimately hired a different contractor to complete the work, but argued that the work is

yet to be fully completed, the work done has not been done properly, and that in any event, the repairs were not completed within a reasonable time. The Agent also stated that they have ongoing concerns that the damage will re-occur.

The Tenants stated that the damage was the result of an acute mental health issue suffered by MG due to extreme grief because of the loss of their parents, and that MG's grief and anger are currently well managed with medication, anger management, and therapy, including cognitive behavioral therapy. As a result, they argued that the damage will not re-occur. The Tenants stated that they did attempt to have the damage repaired within a reasonable period, but after hiring their first contractor, they became aware that the Landlord wanted the contractor to have 5 million dollars of liability insurance, not the 2 million dollars carried by their contractor. The Tenants stated that they attempted to resolve the issue with their contractor, who was away because it was now Christmas, and that they ultimately had to hire a new contractor to complete the repairs and required asbestos testing. The Tenants stated that they paid the contractor on April 19, 2023, and that the repairs are now complete, except for the painting of the doors, which were on back-order, and the installation of the blinds.

The Tenants acknowledged that there were delays in getting the repairs done, but stated that these were due to the Landlord's failure to communicate their desired liability insurance requirements for a contractor, staffing issues with their contractor, the fact that the contractor's warehouse was broken into, and supply chain issues.

The Agent sought an order of possession as soon as possible. The Tenants sought cancellation of the One Month Notice. Both parties sought recovery of their respective filing fees.

Analysis

Section 47(1)(f) of the Act states that a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. While I have reviewed the extensive documentary evidence provided by the Agent, including photographs and videos, and acknowledge that there are several small carpet stains, a crack/indent in one wall, damaged blinds, and holes in several doors, I find that the damage shown, while not insignificant, falls well short of what I would consider to be "extraordinary damage". I also dismiss the Agents argument that the damage is extraordinary in nature as they do not know how it was caused and therefore it may reoccur in the future. The ending of a

tenancy is a serious matter, and I do not accept this speculative argument as grounds for doing so. As a result, I find that the Landlord has failed to satisfy me that they have grounds to end the tenancy under section 47(1)(f) of the Act.

The Landlord also sought to end the tenancy pursuant to section 47(1)(g) of the Act which allows a landlord to end a tenancy if a tenant does not repair damage to the rental unit, as required under section 32(3) of the Act, within a reasonable time. Although the Agent argued that the Tenants had failed to have the rental unit sufficiently repaired within a reasonable time, I disagree. It is clear to me from the testimony of the parties, as well as the documentary evidence before me, that the Tenants made timely, concerted, and sincere efforts to have the rental unit repaired to the Landlords liking, and that these efforts were hampered first by the Landlord's displeasure with the amount of liability insurance carried by the initial contractor hired by the Tenants, then the holidays, then staffing issues with their new contractor, delays associated with a robbery at their contractor's warehouse, and finally supply chain issues. As the Landlord's required the Tenants to not only hire a contractor, but to hire a contractor with an amount of liability insurance of their choosing, resulting in the need for the Tenant's to find and then hire a second contractor, I find it reasonable to conclude that the repairs would take much longer to complete, than if the Landlord had simply allowed the Tenants to patch the wall crack and purchase and install new doors and blinds themselves. As a result, I find much of the delays in the completion of the repairs are the result of things beyond the Tenants' control, such as the Landlord's preferences, contractor and staff availability, a break-in at their contractor's warehouse, and supply chain issues.

Although the Agent argued that the drywall has not been properly repaired, as the drywall should have been cut out and replaced, I am not satisfied this is the case. I am satisfied by the documentary evidence that what appears to have been a dent and crack in the drywall, not a hole as alleged by the Agent, was filled in and sanded by the Tenant's licensed contractor. While the Landlord may have wished for the contractor to complete a different style of repair, I am not satisfied that the repair completed, despite not being the Landlord's preferred method, is in any way inappropriate or insufficient. As a result, I dismiss this argument and find that the wall has been properly repaired. The Tenants stated that the blinds and doors were delayed due to supply chain issues, and will be installed shortly. I accept this as fact.

As a result, I find that the Landlord does not have grounds to end the tenancy pursuant to section 47(1)(g) of the Act. As I have dismissed both grounds for ending the tenancy

noted on the One Month Notice, I therefore grant the Tenants' Application seeking its cancellation and dismiss the Landlord's Application seeking its enforcement without leave to reapply. However, I order the Tenants to have the blinds and the doors installed, the doors painted, and the carpets cleaned such that the stains are removed, or replaced, as soon as possible, and not later than 30 days from today's date. Should the Tenants fail to comply, the Landlord may serve a One Month Notice pursuant to section 47(1)(l) of the Act.

As the Tenants were successful in their Application, I grant them recovery of their \$100.00 filing fee. As the Landlord was unsuccessful in their Application, I dismiss their claim for recovery of the \$100.00 filing fee without leave to reapply.

Conclusion

The One Month Notice is cancelled. I therefore order that the tenancy continue in full force and effect until it is ended by one or more of the parties in accordance with the Act.

Pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of **\$100.00**. The Tenants are provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: June 9, 2023

Residential Tenancy Branch