



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

This matter was adjourned to written submissions following a hearing on April 18, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 30, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

By an interim decision dated April 18, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of May 31, 2023. This decision should be read together with the Interim Decision.

Preliminary Matter – Written Submissions

The parties indicated that they did not reach a settlement following the hearing on April 18, 2023. The parties submitted written submissions as per the Interim Decision. I find the parties were sufficiently served with each other's submissions pursuant to section 71(1) of the Act.

The Landlord submitted additional evidence on May 30, 2023. However, as stated in the Interim Decision, no further evidence other than proof of service may be submitted. As such, I have not considered the Landlord's additional evidence.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Are the Tenants entitled to reimbursement of their filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on September 1, 2001 and is month-to-month. Rent is \$1,540.00 due on the first day of the month. The Tenants paid a security deposit of \$625.00. The parties had signed a written tenancy agreement but none of the parties have retained a copy.

Previously, the parties had attended dispute resolution hearings regarding the Landlord's application for an early end to the tenancy in August 2022, which was dismissed, as well as a hearing on October 24, 2022 regarding a one month notice to end tenancy for cause that was settled by the parties.

A copy of the current One Month Notice is submitted into evidence. It signed by the Landlord and has an effective date of January 31, 2023. The reasons for this notice are:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The One Month Notice contains the following details of cause:

Tenant has damaged the property as the landlord had everything new in the unit before, these tenants moved in. Landlord provided new appliances, new kitchen, new bathroom, new carpet, white paint on all walls and ceilings. The tenants have seriously damaged the unit by: damaging the kitchen, appliances, bathroom, carpet, missing towel racks, dark paint and other paint colors not authorized by the landlord. The tenants have damaged the unit and need to remove the mold and dirt on window sills, repair broken windows, remove satellite dish and repair stucco, remove unauthorized vehicles from property. Tenants to have unit in a clean manner with no bedbugs, walls painted back to original white, carpet fixed or replaced, kitchen cupboards and counters fixed or replaced, install missing doors, fix all the holes in walls, clean the dirt and/or mold on windows and fix the

windows, remove couch and garbage from balcony. Have the unit cleaned and remove the dead plants off the property. The tenants refuse to fix anything and are constantly harassing the landlord to fix things the tenant damages. If the balcony is damaged due to the tenants heavy furniture and garbage, the tenant needs to fix it. The tenants need to repair this unit or move out, as the damage they have caused to my property exceeds more than just wear and tear. The tenants purposely damaged my property and the repairs to fix the damage is over \$30,000. The tenants are constantly damaging the unit and need to move out. Tenant is not allowing access to inspect the property, please see attached notice. 2 same notices given to tenants on Oct 31 + Nov 1/2022

The Tenants acknowledged receipt of a copy of the One Month Notice attached to their door on November 30, 2022.

Attached to the One Month Notice is a letter from the Landlord dated October 31, 2022, which was previously served on the Tenants. This letter had provided the Tenants with a deadline of December 1, 2022 to correct issues relating to repairs, restoring the rental unit to its previous condition, cleaning, and yard work. This letter also advised that the Tenants would be charged \$200.00 per parking spot to park their cars effective December 1, 2022. The requests in this letter can be summarized as follows:

1. Paint rental unit back to original white colour and fix holes in walls
2. Pay for new carpet and flooring damaged from lack of cleanliness in top and lower levels
3. Clean mould and dirt around windows, replace all broken windows
4. Replace kitchen appliances, cupboards, countertops, and floors
5. Fix and repair bathroom sink, floors, window that does not open due to paint, and towel racks
6. Add new drywall, fill in all holes, and repaint to original white paint
7. Removed unauthorized satellite dish and repair stucco
8. Remove couch and garbage from back patio, remove garbage from deck and driveway
9. Remove all dead plants from property, perform gardening monthly
10. Remove cars from property, subject to monthly parking fee of \$200 per vehicle effective December 1, 2022
11. Have unit in clean and orderly manner, install missing doors, and resolve any issues with bed bugs, other bugs, or rodents
12. Inspection will take place on December 1, 2022 at 3:00 pm to review work done to bring unit back to original condition before Tenants moved in

The Landlord, TDC, and LH gave the following testimony and evidence:

- The rental unit is a half duplex. The Landlord's daughter TDC started helping with managing the property since the last year and a half.
- The Tenants have damaged the rental unit beyond normal wear and tear as described in the Landlord's letter dated October 31, 2022 and in the One Month Notice. The Landlord only noticed this damage last year. The Tenants painted the walls dark colours and the ceiling with a dark oil paint without the Landlord's permission. The Landlord gave the Tenants 30 days' written notice to correct these issues, but the Tenants did not comply.
- The Tenants have breached section 8(2) of the standard tenancy agreement terms respecting repairing damage to the residential property caused by the Tenants' actions or neglect. According to this section, if the Tenants do not comply with their obligations within a reasonable time, the Landlord may seek an order for the cost of repairs, serve a notice to end tenancy, or both.
- The Tenants would not allow the Landlord to inspect the rental unit. The Landlord gave written notice to inspect the rental unit on December 1, 2022. The Tenants refused to open the door that day. The text message submitted by the Tenants suggesting that the Landlord's group did not show up is fabricated. The Tenants and their witnesses lied about the Landlord not showing up for the inspection on December 1, 2022. The Landlord had called the Tenants the day before the inspection and was told not to go to the rental unit.
- The rental unit has been updated over the years. The Landlord paid \$12,000.00 to renovate the kitchen after the Tenants moved in. The bathroom in the rental unit was renovated twice during the past 20 years, with the most recent renovation taking place approximately two or three years ago. The carpets were replaced around seven or eight years ago.
- The unit occupied by the previous tenants in the other side of the duplex mirrors the rental unit. Those tenants had moved in before the Tenants. When those tenants moved out in winter 2021 after 20+ years, their unit was in great shape. The kitchen cabinets and appliances were in good condition and clean. The walls had their original white paint and were clean.

In response, the Tenants submit as follows:

- The Landlord is relying on similar evidence for the Landlord's previous application for an early end to the tenancy, which was dismissed. In a decision dated September 8, 2022 (the "Previous Decision"), the arbitrator was unable to determine the condition of the rental unit before the Tenants moved in and how

much is reasonable wear and tear as the Landlord did not submit a condition inspection report. The arbitrator found the Landlord did not establish that the Tenants had caused extraordinary damages based on the photos submitted, which showed several walls painted black, some small holes in the walls, a broken window, and missing cabinet doors under the kitchen sink. In addition, the arbitrator found the Landlord had not demonstrated that the Tenants were responsible for yard maintenance in the absence of a written tenancy agreement.

- The Tenants have re-painted the rental unit multiple times during the tenancy and did not use oil paint as alleged by the Landlord. According to Residential Tenancy Policy Guideline 40. Useful Life of Building Elements (“Policy Guideline 40”), interior paint as a useful life of four years. As found in the Previous Decision, this was not extraordinary damage. The Tenants are willing to return the home to its original colour at the eventual end of the tenancy.
- The Landlord has not provided evidence to show that the Tenants have misused the floors or caused damage beyond regular wear and year. Carpets and tile both have a useful life of 10 years. No replacements have been made since the Tenants moved in.
- The window was broken before the Tenants had moved in. The Landlord told the Tenants that it was caused by someone who did not live there. The Tenants were promised that the window would be fixed but it was never repaired. Since the first hearing, the Tenants have cleaned around the windows and have painted the sills in accordance with the Landlord’s request.
- The kitchen appliances, cupboards, countertops, and floors are all near the end of their useful life. Appliances have a useful life ranging from 10 to 15 years. Tile floor has a useful life of 10 years. Cabinets and counters have a useful life of 25 years. Photos of the kitchen cabinet doors and countertop from 2022 and 2023 respectively show wear and tear. The Landlord has not provided evidence of the Tenants causing excessive damage. There was no move-in inspection or report to establish the original condition of these items at the start of the tenancy.
- Hooks in the bathroom are command hooks which are adhered to the wall with adhesive and do not require holes. The Landlord has not provided evidence to show alleged damage to bathroom floor, towel rack, window, and sink.
- The satellite dish was already affixed to the house at the start of the tenancy. The Tenants do not use it and have not used it in the past.
- Garbage has been removed from the deck and driveway. The Tenants submitted recent photos showing these two areas cleared of any garbage. The Landlord’s allegation of a damaged deck is speculative.

- As per the Previous Decision, the Landlord has failed to remonstrate that the Tenants are responsible for yard maintenance. In any case, the Tenants have removed dead plants from the property since the first hearing.
- The Tenants disagree with the Landlord's new requirement of \$200.00 per month per parking spot effective December 1, 2022. Parking has always been included in the monthly rent. The Tenants have an established history of using their back driveway to park vehicles over the entirety of the tenancy. The Landlord has not provided any tenancy agreement showing that parking requires a different fee.
- One of the Tenants, AK, was available and waiting for the Landlord's inspection at 3:00 pm on December 1, 2022. AK was accompanied by two friends, MD and BR. The Landlord did not show up at this time. The Tenants submitted a screenshot of text messages sent to the Landlord at 3:34 pm and 3:37 pm indicating that AK had been waiting for their visit. The One Month Notice was delivered to the Tenants' mailbox on November 30, 2022, which was before the December 1, 2022 inspection.

Witnesses MD and BR each testified that they were with AK at the rental unit on December 1, 2022 waiting for the Landlord, who did not show up.

Analysis

1. Should the One Month Notice be cancelled?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the One Month Notice and find that it complies with the requirements of sections 47(2) and 52 of the Act.

I find the Tenants were served with the One Month Notice on November 30, 2022 in accordance with section 88(g) of the Act. The Tenants submitted this application on December 6, 2022. I find the Tenants made this application within the 10-day period required under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice for ending the tenancy correspond to circumstances described in sections 47(1)(f) to (h) of the Act.

I will address each of these causes as follows: (i) extraordinary damage, (ii) failure to repair damage, and (iii) breach of a material term. I note that I do not find anything to turn on the events of December 1, 2022 or the parties' dispute about parking, so I do not make any findings with respect to those issues.

i. Extraordinary Damage

I have reviewed the photos of the rental unit submitted into evidence by the parties. I find the photos mostly show that the Tenants have painted the walls and ceilings of the rental unit in various dark and bright colours. I find the photos also show a small hole in the wall, a dislocated sliding door, peeling paint from the kitchen cupboard, and a section of the carpet which appears somewhat dirty and frayed at the edges. I find there is insufficient evidence to show damage to the flooring or bathroom elements. I agree with the assessment made by the arbitrator in the Previous Decision in that I do not find the photos submitted to show that there has been "extraordinary damage" in the rental unit, considering the age of the rental unit and the length of the tenancy.

I note that I do not find painting the walls and ceilings a different colour to constitute damage to the rental unit. I accept that the Tenants did not obtain the Landlord's

permission prior to painting. According to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises (“Policy Guideline 1”), changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may return the unit to its original condition and may claim the costs against the tenant. I find the Tenants have agreed in their submissions to paint the walls and ceilings back to their original colour before the eventual end of the tenancy.

Based on the foregoing, I find the Landlord has not provided sufficient evidence to show that the Tenants have caused extraordinary damage to the rental unit or property.

ii. Failure to Repair Damage

Under section 32(3) of the Act, a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. If the tenant does not repair damage as required under section 32(3) of the Act within a reasonable time, the Landlord may issue a notice to end tenancy under section 47(1)(g) of the Act.

Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear. According to Policy Guideline 1, reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

I find the Landlord did not submit any evidence, such as receipts, invoices or photos, to establish when and how the Landlord had maintained, repaired, or renovated the rental unit over the years. I have considered the photos of the next door unit submitted by the Landlord, but I find this evidence to be less helpful for proving the actual condition of the rental unit. I also find the Landlord has not clearly explained how the Tenants would have intentionally or negligently caused excessive damage to areas in the rental unit such as flooring, countertops, cupboards, and appliances.

I accept the Tenants’ submission that the length of the tenancy has resulted in many components of the rental unit being close to or past their useful life. Considering this factor and in the absence of any move-in inspection report or maintenance records from the Landlord, I find it is difficult to assess whether the issues complained of by the Landlord had pre-existed the tenancy, resulted from natural wear and tear over a

tenancy of more than 20 years, were brought about by the Landlord's inadequate maintenance of the rental unit, or were caused by the Tenants' actions or neglect.

Under these circumstances, I am unable to find that it would be reasonable for the Landlord to request the Tenants to pay for brand new flooring, carpets, drywall, and kitchen appliances etc., or to otherwise restore the rental unit to its newer condition at the start of the tenancy. I accept the Tenants have already made efforts to address some of the issues raised in the Landlord's letter, which include putting back the closet door, removing garbage from the patio deck, clearing dead plants, and cleaning mould.

Based on the foregoing, I conclude that the Landlord has not provided sufficient evidence to establish cause for ending the tenancy under section 47(1)(g) of the Act.

iii. Breach of a Material Term

I find the material term referred to by the Landlord, namely section 8(2) of the standard tenancy terms, effectively incorporates a tenant's obligations to repair under section 32(3) of the Act and a landlord's right to end a tenancy for lack of repairs within a reasonable time under section 47(1)(g) of the Act.

As I have already determined above that the Landlord has not provided sufficient evidence to prove that the deterioration in the rental unit is damage caused by the Tenants' actions or neglect, I find the Landlord has also not established a breach of section 8(2) of the standard tenancy terms. Accordingly, I conclude that the Landlord has not proven cause for ending this tenancy under section 47(1)(h) of the Act.

Overall, I find the Landlord has not demonstrated that this long-standing tenancy should be ended for one or more of the reasons stated in the One Month Notice at this time. Accordingly, I order that the One Month Notice be set aside.

2. Are the Tenants entitled to reimbursement of their filing fee?

As the One Month Notice has been set aside on this application, I grant the Tenants reimbursement of their filing fee under section 72(1) of the Act.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenants are authorized to recover their filing fee from the Landlord through a one-time deduction of **\$100.00** from July 2023 rent.

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: June 29, 2023

Residential Tenancy Branch