Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **TT: CNC PSF FFT**
LL: OPC FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (Act). The Tenants made one application (Tenants' Application) for:

- an order for cancellation of a One Month Notice for Cause dated December 22, 2022 (1 Month Notice) pursuant to section 47;
- an order for the Landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 27; and
- authorization to recover the filing fee for the Tenants' Application from the Landlords pursuant to section 72.

The Landlords made one application (Landlords' Application) for:

- an Order of Possession for cause pursuant to sections 47 and 55; and
- authorization to recover the filing fee for the Landlords' Application from the Tenants pursuant to section 72.

The original hearing of the Application was held on April 27, 2023 (Original Hearing). The two Landlord's (JZ and JL), an interpreter (JT) for the Landlords and the two Tenants (JH1 and JH2) attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, JH1 stated the Tenants served the Notice of Dispute Resolution Proceeding on the Landlords by registered mail on December 23, 2022. JH1 did not provide the Canada Post tracking number for service of the NDRP. Although the Tenants did not serve each of the Landlords individually with the NDRP as required by Rule 3.1 of the RoP, JZ acknowledged the Landlords received and reviewed the NDRP. As such, I find the NDRP was sufficiently served on each of the Landlords pursuant to section 71(2)(b) of the Act.

At the Original Hearing, JH1 stated the Tenants served their evidence on the Landlords' door on February 14, March 10 and April 7, 2023. The JZ acknowledged the Landlords received the Tenants' evidence. As such, I find the Tenants' evidence was served on the Landlords in accordance with the provisions of section 88 of the Act.

At the Original Hearing, JZ stated the Landlords served some of their evidence on the Tenants by registered mail on February 9, 2023 and additional evidence on the Tenants' door on February 3, and February 5, 2023. JZ provided the Canada Post tracking number for service of some of the Landlords' evidence on the Tenants to corroborate her testimony. JH1 acknowledged the Tenants received the Landlords' evidence by registered mail and on the Tenants' door. As such, I find the Landlords' evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

The Original Hearing was scheduled for 60 minutes. However, by 66 minutes into the hearing, it became clear that the parties would not be able to complete their testimony and rebuttals. Based on the foregoing, I adjourned the Original Hearing and issued a decision dated April 29, 2023 (Interim Decision) pursuant to Rule 7.8 of the RoP. The Interim Decision stated the parties were not to serve each other with, or submit to the Residential Tenancy Branch (RTB), any additional evidence. The Tenants were ordered not to amend the Tenants' Application and the Landlords were ordered not to amend the Landlords' Application. The Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for May 29, 2023 (Adjourned Hearing), were served on the parties by the RTB. JH1, JH2, JZ, JL and JT attended the Adjourned Hearing. The parties attending the Adjourned Hearing were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Severance and Dismissal of Tenant's Claim

At the outset of the Original Hearing, I observed the Tenants' Application included a claim for an order for the Landlord to provide services or facilities required by the tenancy agreement or law (Tenants' Other Claim).

Rule 2.3 of the Rules states:

> 2.3 **Related issues**
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> 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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The Original Hearing was scheduled for one hour. At the outset of the Original Hearing, I advised the parties the primary issue in the Tenants' Application was whether the tenancy will continue, or end based on the 1 Month Notice. Accordingly, I find the Tenants' Other Claim was not sufficiently related to the primary issues of whether the 1 Month Notice would be cancelled. Based on the above, I will dismiss the Tenants' Other Claim, with or without leave, depending upon whether I cancel the 1 Month Notice.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- Are the Tenants entitled to recover the filing fee of the Tenants' Application from the Landlords?
- If the Tenants are not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?
- If the Tenants are not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to recover the filing fee for the Landlords' Application from the Tenants?

Background and Evidence

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

JH1 submitted into evidence a copy of the tenancy agreement dated November 14, 2021. The parties agreed the tenancy commenced on December 1, 2021, for a fixed term ending November 30, 2022, with rent of $1,425.00. The Tenants were required to pay a security deposit of $712.50 and a pet damage deposit of $712.50. JZ acknowledged the Landlords received the security and pet damage deposits and that they Landlords were holding the deposits in trust for the Tenants.

JH1 submitted into evidence a copy of the 1 Month Notice. JZ stated the Landlords served the 1 Month Notice on the Tenants' door on December 21, 2022. JH1 acknowledged the Tenants received the 1 Month Notice. I find the 1 Month Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

The 1 Month Notice stated the causes for ending the tenancy were:

- The Tenant, or a person permitted on the property by the tenant has
    - significantly interfered with or unreasonably disturbed another occupant or the landlord
    - seriously jeopardize the health or safety or lawful right of another occupant or the landlord
    - put the landlord's property at significant risk

The details of the causes provided in the 1 Month Notice were:

> Please refer to RTB Disputation #[File Number of previous application or dispute resolution] in which the hearing has concluded and a decision has been made: tenants provided false information to the landlords. Tenants stated as non-smoker, in fact, they are found to smoke marijuana, although tenants were told by [JZ], the landlord at the time of sing the tenancy agreement that [ZH] had a medical reason to keep from any kinds of smoking, marijuana and etc.; there is the case issued by RCMP [municipality in which the rental unit is located], November 30, 2022, the file

> number is [file number of RCMP report] in the event, tenants seriously jeopardized lawful right of the landlords, they force landlords to provide the services/facilities not included in the tenancy agreement.

JZ stated the Landlords are disturbed by the Tenants' cat who yowls loudly everyday. JZ stated she posted a notice on the Tenants' door regarding the problem on March 13, 2023. JZ stated the Tenants were also unreasonably disturbing the Landlords as a result of excessive noise emanating from the rental unit. The Tenants denied this allegation. JZ did not submit a copy of the warning letter served on March 13, 20203 to the RTB nor did she provide a proof of service attesting to service of the warning letter on the Tenants' door.

JZ stated the smoke detector went off on December 21 or 22, 2022. JZ stated the Landlords entered the rental unit to investigate and found the Tenants left a turkey in the oven unattended and the rental unit was full of smoke. JZ stated this put the Landlords' property at risk. JZ admitted the fire department was not called. JZ stated the Landlords served the Tenants with notice to enter the rental unit to inspect the smoke alarm but JH1 would not allow them to enter the rental unit. JZ stated that the failure of the Tenants to allow them to enter the rental unit interfered with their right access the rental unit after notice had been given to the Tenants. JZ admitted the Landlords did not serve a written notice on the Tenants warning them not to leave items on or I the stove unattended or they have failed allow the Landlords access to the rental unit when written notice has been served on them.

JZ stated the Tenants have been smoking in the rental unit and on the residential property. JZ stated the advertisement they placed for the rental unit stated that there was no smoking. JZ stated the Tenants lied on their application to rent the rental unit by saying they were non-smokers. JZ submitted into evidence a copy of the advertisement to corroborate her testimony. JZ stated the smoking affects the health of the Landlords. JZ submitted into evidence a video in which JZ can be heard telling JH1 that the Tenants have been smoking in the rental unit and on the residential property and JH1 stated they never smoke on the residential property. JZ admitted the Landlords have not served the Tenants with a written notice in which they have advised the Tenants that the smoke has unreasonably disturbed the Landlords or that the smoking is seriously jeopardizing the health of the Landlords and warn the Tenants they are not to smoke in the rental unit or on the residential property.

JZ stated the Tenants took the cat to a veterinarian and that she is now on medication and does not make as much noise now. Both of the Tenants stated they have not smoke in the rental unit or the residential property. Both Tenants stated they smoke on the sidewalk in front of the residential property or go for walks in public areas. The Tenants stated the incident with the smoke alarm was an accident.

Analysis

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* provides that, when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and they are the applicants in the Tenants' Application, the Landlords are required to present their testimony first.

The standard of proof in a dispute resolution hearing 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 on the person making the claim. In this case, the onus is the Landlords to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Section 47(1) of the Act requires the Landlords prove that they entitled to end the tenancy for cause if the Landlords can prove, on a balance of probabilities, that there has been a breach of one or more of the causes stated in the 1 Month Notice. Sections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii) and sections 47(2) to 47(5) of the Act state:

> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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> […]
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> […]

(2) A notice under this section must end the tenancy effective on a date that is
  (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.
(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  (b) must vacate the rental unit by that date.

[emphasis in italics added]

I note that subsection 47(1)(d)(i) uses the adjectives “seriously” and “unreasonably” as part of the cause stated in that subsection, subsection 47(1)(d)(ii) uses the adjective “seriously” as part of the cause stated in that subsection and subsection 47(1)(d)(iii) uses the adjective “significant” as part of the cause stated in that subsection. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant an eviction of the Tenant pursuant to subsections 47(1)(d)(i), 47(1)(d)(ii) and 47(1)(d)(iii). I also find that, prior to serving a tenant with a One Month Notice for Cause that relies on any of those subsections, the landlord must give the tenant at least one written notice that advises the tenant of the nature of the breach of a subsection(s) of section 47(1)(d), request the tenant to remedy the breach, and provide the tenant with a reasonable period of time to remedy their behavior or conduct.

The 1 Month Notice was served on the Tenants’ door on December 21, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice on December 24, 2022, being three days after placing it on the Tenants’ door. Pursuant to section 47(4) of the Act, the Tenants had until January 3, 2023, being the next business day after the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the

Tenants' Application was made on December 23, 2022. As such, the Tenants' Application was made within the 10-day dispute period required by section 47(4) of the Act.

JZ stated the Landlords are disturbed by the Tenants' cat who yowls loudly everyday. JZ stated the Tenants were also unreasonably disturbing the Landlords as a result of excessive noise emanating from the rental unit. JH1 stated the Tenants took the cat to a veterinarian and that she is now on medication and does not make as much noise now. JZ stated she posted a written notice on the Tenants' door on March 13, 2023. The Tenants denied this testimony. JZ did not submit a copy of the warning letter to the RTB nor did she provide a proof of service attesting to service of the warning letter on the Tenants' door. Furthermore, the warning letter was served on the Tenants more than two months after the 1 Month Notice was given. Before a landlord serves a One Month Notice for Cause to End a tenancy in reliance of subsection 47(1)d(i) of the Act, the Landlord must firstly give the tenant at least one warning letter so that the tenant has the opportunity to remedy their behavior or conduct. Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, they are entitled to rely on section 47(1)(d)(i) of the Act for cause to end the tenancy on the basis of the alleged noise disturbances by the Tenants.

JZ stated the smoke detector went off on December 21 or 22, 2022. JZ stated the Landlords entered the rental unit to investigate and found the Tenants left a turkey in the oven unattended and the rental unit was full of smoke. JZ admitted the fire department was not called. JZ admitted the Landlords did not serve a warning letter on the Tenants regarding this incident. JZ stated the Landlords served the Tenants with notice to enter the rental unit to inspect the smoke alarm, but JH1 would not allow them to enter the rental unit. JZ admitted the Landlords did not serve a warning letter on the Tenants regarding either leaving the turkey in the oven unattended or for failure to allow the Landlords access to the rental unit. As noted above, is relying on a subsection of 47(1)(d) of the Act to end a tenancy, the landlord must firstly give the tenant at least one written notice warning the tenant of the breach and then allow the tenant the opportunity to remedy their behavior or conduct.

JZ stated the Tenants have been smoking in the rental unit and on the residential property. JZ stated the advertisement they placed for the rental unit stated that there was no smoking. JZ stated the Tenants lied on their application to rent the rental unit by saying they were non-smokers. JZ stated the smoking affects the health of the Landlords. JZ submitted into evidence a video in which the JZ is heard telling JH1 the Tenants have been smoking in the rental unit and on the residential property and JH1 stated they never smoke on the residential property. JZ admitted the Landlords have not served the Tenants with a warning letter in which they have advised the Tenants that the smoke has unreasonably disturbed the Landlords or that it is seriously jeopardizing the health of the Landlords and that the Tenants are not to smoke in the rental unit or on the residential property.

Both of the Tenants stated they have not smoked in the rental unit or the residential property. Both Tenants stated they smoke on the sidewalk in front of the residential property or go for walks in public areas. As noted above, is relying on a subsection of 47(1)(d) of the Act to end a tenancy, the landlord must firstly give the tenant at least one written notice warning the tenant of the breach and then allow the tenant the opportunity to remedy their behavior or conduct. As such, I find the Landlords have not proven, on a balance of probabilities, that they are entitled to end the tenancy on the basis of a beach of any of the subsections of 47(1)(d) in respect of the alleged smoking by the Tenants in the rental unit or on the residential property. As the Landlords did not give the Tenants at least one written notice warning them not smoke in the rental unit or on the residential property, I find the Landlords have not proven, on a balance of probabilities, that they are entitled to end the tenancy on the basis of a beach of any of the subsections of 47(1)(d) in respect of the alleged smoking incidents.

Based on the foregoing, I find the Landlord has failed to prove, on a balance of probabilities, that there was cause to end the tenancy under any of subsections 47(1)(d)(i), 47(1)(d)(ii) or 47(1)(d)(iii) of the Act. As such, I find the 1 Month Notice was not issued for a valid cause. Accordingly, I order the 1 Month Notice to be cancelled and is of no force or effect. This tenancy continues until lawfully ended in accordance with the Act.

As the Tenants have been successful in the Tenants' Application, I grant the Tenants recovery of the filing fee of $100.00 pursuant to subsection 72(1) of the Act. Pursuant section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting $100.00 from the next months' rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

As the Landlords have not been successful in the Landlords' Application, I find they are not entitled to recover the filing fee of the Landlords' Application from the Tenants.

As the tenancy has not ended, I dismiss the Tenants' Other Claim with leave to reapply. The Tenants may make a new application for dispute resolution with the RTB to make that claim.

Conclusion:

I allow the Tenants' Application to cancel the 1 Month Notice. The 1 Month Notice is of no force or effect. The tenancy continues until lawfully ended in accordance with the Act.

The Tenants are ordered to deduct $100.00 from next months' rent in satisfaction of their monetary award for recovery of the filing fee for the Application.

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 22, 2023

Residential Tenancy Branch