Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (Application) filed by the Tenants pursuant to the *Residential Tenancy Act* (Act). The Tenants applied for:

- an order cancelling a One Month Notice to End Tenancy dated January 25, 2023 (1 Month Notice) pursuant to section 47 of the Act; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The two Landlords (GP and MP) and two of the three Tenants (BP and AP) attended the 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*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AP stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (NDRP Package) on each of the Landlords by registered mail on February 9, 2023. AP submitted into evidence a copy of the Canada Post receipt and tracking numbers for service of the NDRP Package on each of the two Landlords to corroborate his testimony. GP stated the Landlords received the NDRP Package. As such, I find the NDRP Package was served on each of the two Landlords in accordance with the provisions of sections 88 and 89 of the Act.

GP stated the Landlords served their evidence on the Tenants by special delivery but could not provide the date of posting. AP acknowledged the Tenants received the Landlords' evidence. As such, I find the Landlords' evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- Are the Tenants entitled to recover the filing fee for the 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 to the rental unit pursuant to section 55(1) of the Act?

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. As such, only the principal aspects of the Application, the relevant testimony and evidence given at the hearing and my findings are set out below.

I note that the Landlords provided testimony, and submitted evidence, in which they made numerous allegations of other breaches of the Act and the tenancy agreement that were not listed in the details section of the 1 Month Notice. A One Month Notice for Cause must provide sufficient details of the breach(es) listed in the Notice so that the tenant may respond to the cause to end the tenancy listed in the Notice. As the details section of the 1 Month Notice did not document or identify details of the other allegations made by the Landlords at the hearing, I have not documented the testimony and evidence provided by the parties regarding those other allegations in this decision.

The parties did not provide a copy of the tenancy agreement between the Tenants and former landlord of the rental unit. GP stated the Landlords purchased the rental unit in June 2006 and they were not provided with a copy of the tenancy agreement between the former landlord and the Tenants. The parties agreed the tenancy commenced on July 1, 2003, with rent of $900 per month payable on the 1st day of each month. The parties agreed the rent is now $1,147.50 per month. The Landlords acknowledged the Tenants paid the security deposit and that they were holding the deposit in trust for the Tenants.

The Tenants stated they reside in the rental unit with their daughter. The Tenants admitted they operate a small business in which they manufacture pillows and microwaveable heat bags that they sell online and at farmers markets and craft fairs. The Landlords did not provide any evidence to indicate that the rental unit was primarily occupied by the Tenants for business purposes.

GP stated the 1 Month Notice was served on AP in-person on January 25, 2023. AP acknowledged the Tenants received the 1 Month Notice. As such, I find the 1 Month Notice was served on the Tenants pursuant to the provisions of section 88 of the Act. The 1 Month Notice stated the causes for ending the tenancy were:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - damage the landlord's property
    - adversely the quiet enjoyment, security, safety or physical well-being of another occupant of the property
    - adversely jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

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

1. You were repeatedly asked to cease all operations of a commercial business in your rental unit, and failed to do so.
2. The noise and congestion caused by your business has significantly impacted the quiet enjoyment of other residents.
3. Your storage of flax seeds at the rental unit has caused significant health risks including, inter alia, a rat problem and ants.
4. Your commercial business in contravention of local municipal bylaws.
5. Leaving exposed electric wiring on the floor of your unit is a fire and safety hazard.

GP submitted into evidence a letter, dated January 25, 2023, to the Tenants from legal counsel for the Landlords that sets out certain terms of the tenancy agreement. The Landlords' legal counsel stated they were advised that the Tenants were in breach of materials terms of the tenancy agreement as follows:

- The unit would be exclusively occupied by the Tenants for residential purposes
- Operating a business from the rental unit, without consent of the Landlords, is forbidden
- The rental unit will be maintained in a safe and sanitary condition at all times
- The rental unit will not be used for storage of commercial goods
- The building utilities are not to be utilized for commercial purposes
- Parking spaces intended for residents are not available for commercial purposes without the consent of the Landlords

The letter stated the Tenants had failed to take steps to rectify these matters, despite repeated requests from the Landlords to do so. The letter provided the Tenants were to cease all operations of a commercial business in the rental unit. The letter stated that home occupations shall meet all provincial and federal health and safety requirements and produce no public offence or nuisance, by noise, vibration, smoke, odour, dust, heat, glare, electrical interference, or by any other means.

The Landlords admitted they did not serve the Tenants with any written notices in which the Landlords warned the Tenants that they were to rectify any breaches listed in the 1 Month Notice in the recent period prior to serving the 1 Month Notice on the Tenants. The Landlords admitted they did not submit to the Residential Tenancy Branch any copies of the relevant provisions of any federal or provincial statutes or municipal bylaws to demonstrate the Tenants, or guests of the Tenants, had engaged in illegal activities.

GP submitted into evidence a copy of a letter to the Tenants dated February 28, 2022. That letter refers to another letter dated September 2018 that referred to clutter in the rental unit and that the Landlords could not install permanent hearing within the rental unit until the excess debris was cleaned up. The February 28, 2022 letter stated it was nearing 3 ½ years later and that the date for the heating installation would be April 20, 2022. The letter stated the electrician would not perform the installation of the electrical heating until the unit was cleaned up as it would otherwise be dangerous, unsafe and break bylaws and codes related to the installation. GP stated some clutter has been removed from the rental unit. GP agreed electrical baseboard heaters were installed in the rental unit by an electrician in November 2022.

GP submitted a letter, dated May 9, 2023, from another resident of the residential premises. In that letter the resident stated that, on February 14, 2023, they observed a courier go to the entrance door and they were greeted by BP at the entrance to the rental unit. The resident stated they did not hear the intercom buzzer outside for BP to go to the door to let the courier in. The resident stated they suspected the Tenants had given the courier the access code for the residential premises. GP stated the Tenants have placed the residential property at risk by providing the access code to the courier. The Tenants disputed this witness statement.

GP submitted into evidence photos of the interior of the rental unit that showed significant clutter in a variety of rooms. GP submitted into evidence photos showing a truck and SUV containing sacks of products that were delivered to the rental unit. GP submitted into evidence a photo of the entrance door to the residential property and stated it had been damaged by the Tenants or their guests from using the rental unit for delivery of commercial purposes. GP stated the Tenants have caused damage to the kitchen cupboards. The Landlords did not submit a copy or copies of any written demands on the Tenants to perform repairs to the entrance door or kitchen cupboards.

GP submitted photos that showed rat traps along the outer door of the basement entrance of the rental unit and stick pads for ants in the furnace room for mice. GP stated the Tenants were causing a rodent infestation. The Landlords did not provide any actual evidence there were rats in the building and admitted the Landlords have not been required to call for an exterminator to provide services to the residential property.

GP stated the Tenants were causing wear and tear on the washer and drying, use of electrician, water and gas. GP stated the Tenants were disposing of non-residential materials from the business in the garbage bins. GP admitted the Landlords did not serve the Tenants with a warning letter that they were only to use the washer and dryer for personal use items or to stop placing garbage in the bins for refuse arising from residential use of the rental unit.

AP stated the Tenants cleared the rental unit of clutter and that the permanent electrical hearing had been installed by the electrician. GP admitted the electrical heating was installed in November 2022. AP submitted photos of the rental unit to show the rental unit had been cleaned up. AP stated the Tenants are now storing their supplies at a storage locker offsite. AP stated there was only one electrical extension cord in their daughter’s bedroom.

AP stated the Tenants were not disturbing other occupants of the residential property. AP submitted into evidence signed statements from the occupants of three different units in the residential building, all dated February 8, 2023, in which those occupants stated they were no issues about noise or being disturbed by the Tenants.

GP stated the Tenants were operating a commercial business in the rental unit without the Landlords' permission and without a business license to do so. Other than for the Lawyer's letter, which was dated after the date of the 1 Month Notice, GP admitted the Landlords did not serve the Tenants with a warning letter that the Tenant's were to cease business operations. AP stated the Tenants have a business license from the municipality in which the rental unit is located. The Landlords did not submit a copy of the municipal bylaw which prohibited the type of business operated by the Tenants required a permit or that the Tenants were required to obtain the consent of the Landlords in order to obtain the business licence.

Analysis

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 Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Sections 4(d) and subsections 47(1)(d)(i), 47(1)(d)(i) and 47(1)(h) of the Act state:

> 4. This Act does not apply to
> […]
> (d) living accommodation included with premises that
> (i) are primarily occupied for business purposes, and
> (ii) are rented under a single agreement,
> […]
>
> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> […]
> (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 the landlord,

(iii) put the landlord's property at significant risk;

[…]

(e) Tenant or a person permitted on the property by the tenant has engaged in illegal activity that

(i) has, or is likely to damage the landlord's property;

(ii) has adversely affected or is likely to adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[…]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[…]

(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.

The 1 Month Notice was served on the Tenants in-person on January 25, 2023. Pursuant to section 47(4) of the Act, the Tenants had until February 4, 2023, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Application was made on January 28, 2023. As such, I find the Application to dispute the 1 Month Notice was made within the 10-day dispute period required by section 47(4) of the Act.

The Tenants stated they reside in the rental unit with their daughter. The Tenants admitted they operate a small business in which they manufacture pillows and microwaveable heat bags that they sell online and at farmers markets and craft fairs. The Landlords did not provide any evidence to indicate that the rental unit was primarily occupied by the Tenants for business purposes. Based on the testimony of the Tenants and the agreed terms of the tenancy agreement, I find this tenancy is not excluded from the provisions of the Act. As such, I find I have jurisdiction to hear the Application.

The Landlords stated the Tenants have breached material terms of the tenancy agreement by operating a business in the rental unit. The Tenants stated they have a permit from the municipality in which the rental unit to conduct their business.

Residential Tenancy Policy Guideline 8 (PG 8) provides guidance on unconscionable and material terms in a tenancy agreement. PG 8 states in part:

> **Material Terms**
>
> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*
>
> The question of whether a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether the clause is material.

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.
>
> [emphasis in italics added]

The Landlords stated they were not provided with a copy of the tenancy agreement by the former landlord and, therefore, they were unable to provide a copy of it for this proceeding. Without a copy of the tenancy agreement, I cannot determine if the tenancy agreement contained any "material terms" as that term is used in the Act and as outlined in by PG 8. I also note the Landlords did not submit any evidence they served the Tenants with a written notice in which they identified the breach or breaches of a material term of the tenancy and require the Tenants to correct the breach of the tenancy agreement within a reasonable period of time as required by section 47(1)(h) of the Act. I find the information provided in the letter dated January 25, 2023 from the Landlords' legal counsel is not relevant as the information contained therein is not based on an examination of the tenancy agreement that applies to this tenancy nor does it take into account any of find of facts I may make in this proceeding. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have breached a material term or terms of the tenancy agreement in breach of section 47(1)(h) of the Act.

The Landlords stated the Tenants, or persons permitted on the residential property, had engaged in illegal activities and that there had been breaches of sections 47(1)(e)(i), 47(1)(e)(ii) and 47(1)(e)(iii) of the Act. *Residential Tenancy Policy Guideline 32* (PG 32) provides guidance on the meaning of "illegal", what may constitute "illegal activity" and

circumstances under which termination of the tenancy should be considered. PG 32 states in part:

> The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

The Landlords did not submit a copy of the relevant federal or provincial statute or municipal bylaw to establish there has been illegal activity or activities by the Tenants, or a person they have permitted on the residential property, as required by PG 32. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have engaged in any illegal activities. Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have breached any of sections 47(1)(e)(i), 47(1)(e)(ii) and 47(e)(iii) of the Act.

The Landlords stated the Tenants have vehicles deliver supplies to them and these vehicles have interfered with the right of other occupants to use the parking spaces on the residential property. The Landlords stated the noise and vibration caused by the Tenants' commercial activities have unreasonably disturbed other occupants of the residential property. The Landlords did not provide any witness statements from other occupants of the residential property, or call any witnesses, to support their allegations that the Tenants have interfered with the right of other occupants to park their cars or that the Tenants have unreasonably disturbed other occupants of the residential property. The Tenants provided signed statements from the occupants of three different units in the residential building in which those occupants stated they were no issues about noise or being disturbed by the Tenants. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have breached section 47(1)(d)(i) of the Act by interfering with, or unreasonably disturbing another occupant of the residential property or the Landlords.

The Landlords stated the Tenants had given the access code to the residential property to a courier. The Landlords provided a written statement from a tenant advising they saw a courier enter the building without either of the Tenants going to the entrance door to let the courier in. The Tenants denied they provided the access code to the courier. The Landlords stated the Tenants did not remove the clutter from the rental unit so that an electrician could install electrical baseboard heaters in the rental unit. The Landlords stated the Tenants had electrical cords all over the floors of the rental unit and that they are a fire hazard which put the Landlords' property at risk. However, the parties agreed

the Tenants cleaned the unit sufficiently such that the electrical hearing was installed in November 2022, being several months before the 1 Month Notice was installed. The Tenants stated there was only one CSA approved extension cord in the rental unit. The Landlords provided a copy of a letter, dated February 28, 2022, to the Tenants regarding the clutter and extension cords. This letter was served on the Tenants after the 1 Month Notice. As this letter was served on the Tenants after service of the 1 Month Notice, I find it is not relevant to a determination of whether the Tenants were in breach of a provision of section 47(1).

GP stated the Tenants were causing wear and tear on the washer and drying, using excessive amounts of electricity, water and gas. GP stated the Tenants were disposing non-residential materials from their business operations in the garbage bins. GP admitted the Landlords did not serve the Tenants with a warning letter that they were only to use the washer and dryer for items used for residential and not commercial purposes or to stop placing garbage in the refuse bins that did arise from residential use of the rental unit. Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that the Tenants breached section 47(1)(d)(ii) of the Act by interfering with the Landlord's lawful right to maintaining security on the residential property or lawful right to access the rental unit to perform repairs or upgrades to the rental unit or the lawful right of the Landlords to require that the Tenants only use the washer and dryer for residential purposes and to use the garbage bins for residential refuse and not commercial garbage.

The Landlords stated the Tenants had rodent traps outside an entrance door to the rental unit and inside the rental unit as well as ant traps. The Tenants stated the rodent traps were precautionary and that there were always ants outside the rental unit. The Tenants also stated they now store their supplies offsite. The Landlords admitted they have not required the use of extermination services in or around the rental unit. The Landlords did not submit any evidence the Tenants are still storing unreasonable amounts of supplies in the rental unit. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have breached section 47(1)(d)(ii) of the Act.

The Landlords stated the deliveries of goods to the rental unit have caused damage to the entrance door to the residential premises and they provided photos of the door. I cannot see any major damage to the entrance door in the photos supplied by the Landlords. Furthermore, there is no evidence before me that the Landlords served the Tenants with a written notice in which they requested the Tenants to repair the door within a reasonable period of time as required by section 47(1)(g) of the Act. As the

Landlords did not indicate one of the causes indicated in the 1 Month Notice was a breach of section 47(1)(g) of the Act, I will not consider this issue further.

Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that the Tenants have breached any of sections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii), 47(1)(e)(i), 47(1)(e)(ii), 47(1)(e)(iii) or 47(1)(h) of the Act. Based on the above, I find the 1 Month Notice was not issued for a valid reason. As such, I grant the Tenants' request for an order for the 1 Month Notice to be cancelled and of no force or effect.

As the Tenants have been successful in the 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 month's 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.

Conclusion

The 1 Month Notice is cancelled and of no force or effect. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

The Tenants are ordered to deduct $100.00 from next month's rent in satisfaction of his 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 18, 2023

Residential Tenancy Branch