Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy;
- an order pursuant to s. 70 restricting the Landlord's right of entry;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

J.B. appeared as the Tenant. T.D.C. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This matter had been scheduled for hearing on April 26, 2023 but was adjourned due to issues with service, though both parties acknowledge receipt of each others application materials albeit late. Based on the acknowledged receipt and given the passage of time following the adjournment, I find that the parties initial application materials were sufficiently served in accordance with s. 71(2) of the *Act*.

My interim reasons put no restrictions on service of additional evidence during the adjournment period provided the service deadlines were followed. Both parties chose to serve additional evidence.

The Tenant acknowledged receipt of the Landlord's additional evidence without issue. Based on this, I find that the Tenant was sufficiently served with the Landlord's additional evidence in accordance with s. 71(2) of the *Act*.

The Tenant advised that he served his additional evidence by way of registered mail sent mere days before the hearing. I find that this is in breach of the 14-day deadline for service of evidence imposed upon the applicant Tenant by Rule 3.14 of the Rules of Procedure. As such, it is excluded and shall not be considered by me.

Preliminary Issue – Tenant's Claims

As noted in my interim reasons, review of the application materials did not show a 10-Day Notice for Unpaid Rent had been provided, rather a One-Month Notice for Cause, signed February 13, 2023 (the "One-Month Notice"), was in evidence. At the reconvened hearing, the parties confirmed no notice was issued for unpaid rent, only the One-Month Notice.

Under the circumstances, I find that it is appropriate to amend the Tenant's application such that it be to dispute the One-Month Notice under s. 47 of the *Act*. I do so pursuant to Rule 4.2 of the Rules of Procedure and accept that this could be reasonably anticipated as no notice for unpaid rent had been served.

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch 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 primary issue in dispute is whether the One-Month Notice is enforceable or not. Should it be upheld, the Tenant's claims restricting the Landlord's right of entry and order that the Landlord comply would be irrelevant as the tenancy would be over.

Given this, I dismiss the Tenant's claims under ss. 62 (order that the Landlord comply) and 70 (restricting the Landlord's right of entry). Should the tenancy continue, these claims will be dismissed with leave to reapply. Should the tenancy end, the claims will be dismissed without leave to reapply.

The hearing proceeded strictly on the issue of whether the One-Month Notice is enforceable.

Preliminary Issue – Naming of Parties in Tenant's Application

The Tenant names E.B. in his application as a co-tenant. However, review of the tenancy agreement shows that J.B. is the sole tenant listed, so too does the One-Month Notice. During part of his submissions, the Tenant advised he resides at the rental unit with his son, who is E.B.. Review of some of the evidence suggests that E.B. is a minor.

Parties to disputes before the Residential Tenancy Branch should name themselves and the other side by reference to their tenancy agreement, which ought to have the legal spelling of the parties to the contract. Disputes before the Residential Tenancy Branch are limited to those between landlords and tenants in residential tenancies. In this instance, I find that E.B. is not a co-tenant and is an occupant at the rental unit with his father the Tenant.

Given these circumstances, I further amend the Tenant's application to remove E.B. from it as a co-tenant and co-applicant.

Issues to be Decided

1) Is the One-Month Notice enforceable?
2) Is the Tenant entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on November 1, 2019.
- Rent of $1,966.00 is due on the first day of each month.
- A security deposit of $900.00 was paid by the Tenant.

1) *Is the One-Month Notice enforceable?*

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to the following sections under the *Act*:

- 47(1)(b) - repeated late rent payment;
- 47(1)(g) - failure to complete repairs; and
- 47(1)(h) - breach of a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so.

The Landlord advises that she served the One-Month Notice on the Tenant by leaving it in his mailbox on February 13, 2023. The Tenant acknowledges receiving the One-Month Notice and filed to dispute it on February 15, 2023. I find that the One-Month Notice was served in accordance with s. 88 of the *Act*.

I have been provided with a copy of the One-Month Notice, which describes the causes as follows:

Details of the Event(s):

The rental agreement was to include gardening and taking care of the property. The tenant is not doing any of the agreed tenancy agreement. The rent was to be $300 per month more in exchange for maintaining the property and landscaping. The tenant is not doing what the agreement states, and at the beginning of the tenancy the tenant did a bad job and demanded money from me, as he makes $6,000 per month and demands the landlord to pay for equipment. I want tenant to pay the original rent of $2,300 per month plus the increases as I have a gardener and a professional trades to do some repairs. The tenancy never included his son to live full time on my property, as this is a shared property with other tenants. The tenant is always late in paying the rent and I have a right to hire the proper tradespeople and the tenant has breached the rental agreement as he cannot do any work and gardening on my property as he causes more damage than taking care of the property. I demand the tenant to move out and or to pay the rent that was originally not including the gardening and taking care of the property, as the tenant cannot maintain the property. The tenant is always late paying the rent and utilities, and I have asked him 3 times to remove the rusted metal junk in the back which he refuses to remove.The tenant does not communicate with me either by email or by phone he refuses to communicate with me the landlord. The first time he did some work he demanded money from me as that is not what was agreed to, as I paid for the equipment and paint but he was so nasty, rude and demanding $600 cash for (4) four hours of power washing, which on the agreement its to be inculded in the reduced monthly rent.

If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

Repeated Late Rent Payment

Through the course of the Landlord's submissions, she advised that she did not truly issue the One-Month Notice based on repeated late rent payment. As she said, if rent was late a day or two, that would be fine.

Given that the Landlord bears the burden of proving the One-Month Notice was properly issued, I find that she has failed to do so with respect to this aspect of the notice. I

would further note that the Landlord's testimony would suggest waiver may be applicable under the circumstances in any event. As such, I would not uphold the One-Month Notice based on as. 47(1)(b) of the *Act*.

Failure to Complete Repairs

As explained by the Landlord, the tenancy agreement stipulated that the Tenant was to look after the rental unit in exchange for reduced rent. Specifically, the tenancy agreement states the following under clause 3.b):

> tenant to have content insurance, utilities and gardening/painting/upkeep of unit not included

According to the Landlord, the Tenant has failed to keep up the gardening for the property, saying there are overgrown blackberry bushes and shrubs and that the grass is dead. The Landlord's evidence includes some photographs of the state of the yard.

The Tenant argues he does take good care of the yard and also provides photographs in his evidence.

The Tenant also complained that the Landlord is attending the rental unit without giving notice. The Landlord complained that the Tenant is preventing her from walking her property.

Before addressing the issues in dispute, I wish to provide some general context relevant to these circumstances. The *Act* regulates residential tenancies by setting obligations for landlords and tenants and provides certain procedural rights that would not otherwise exist at common law. Section 32(1) of the *Act* requires that a landlord maintain and repair a property in a manner that complies with health, safety and housing standards and make it suitable for occupation having regard to the age, character, and location of the rental unit. Further, s. 5 of the *Act* prohibits landlords and tenants from avoiding or contracting out of the *Act* and any attempt to do so is of no effect.

I provide this context because there appears to be a problem with the expectation set by clause from the tenancy agreement reproduced above. The clause, at least as it relates to "upkeep of unit not included", runs afoul ss. 32(1) and 5 of the *Act*. In other words, landlords bear the obligation of maintaining a rental unit and cannot download that onto

tenants. Even if there was an agreement to reduce rent for the Tenant to look after general maintenance of the property, that clause would be unenforceable as it seeks to avoid the *Act*.

Policy Guideline #1 provides guidance on yard care, stating that routine maintenance, such as cutting grass or clearing snow, is an obligation of a tenant. However, landlords are generally responsible for major projects, such as cutting and pruning trees.

In this instance, I have been provided no evidence to support that the Tenant has failed to conduct routine maintenance of the yard. Though some shrubs may appear somewhat overgrown, that is a question of aesthetics more than damage to the property. I find that the Landlord has failed to demonstrate that the Tenant caused damage to the rental unit, or the yard, and failed to undertake repairs for damage caused by them. I would not uphold the notice under s. 47(1)(g) of the *Act*.

Breach of a Material Term

The Landlord argued the Tenant has done nothing to comply with the term of the tenancy agreement that he maintain the yard. She says she gave written notice of the term to the Tenant in November 2022. Review of the evidence shows an email date November 24, 2022 saying “I gave you reduced rent in exchange for taking care of some repairs and gardening and you are not following the rental agreement”.

As noted above, I find that the Landlord has failed to demonstrate the Tenant caused damage to the yard. I would further find that there is no evidence to support that the Tenant failed to conduct routine maintenance. I would further add that I find the addition to clause 3.b) of the tenancy agreement is largely an attempt to avoid the *Act*, which is unenforceable on its face. In other words, the Landlord has failed to demonstrate a breach of term of the tenancy agreement and the term she points to is largely unenforceable.

I find that the Landlord has failed to demonstrate breach any breach of the tenancy agreement by the Tenant, much less breach of a material term warranting the end of the tenancy. The One-Month Notice cannot be upheld under s. 47(1)(h) of the *Act*.

Conclusion

I find that the One-Month Notice is unenforceable. It is of no force or effect.

2) *Is the Tenant entitled to his filing fee?*

The Tenant was successful in his application such that he is entitled to his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's $100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I permit the Tenant to withhold $100.00 from rent owed to the Landlord on one occasion in full satisfaction of his filing fee.

Conclusion

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

As the tenancy continues, the Tenant's claims under ss. 62 and 70 of the *Act*, which were severed from the application, are dismissed with leave to reapply.

The Tenant is entitled to his filing fee. Pursuant to s. 72 of the *Act*, I order that he withhold $100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of his filing fee.

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 12, 2023

Residential Tenancy Branch