



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WESTSIDE HOMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application ending with 481: CNR, RR, RP, OLC
Tenant's application ending with 336: CNC, RR, PSF, LRE

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear cross applications.

The tenant's September 26, 2023 application (481) pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- An order requiring the landlord to carry out repairs, pursuant to section 32;
- An order for the landlord to comply with the act, the residential tenancy regulation (the regulation) and/or tenancy agreement, pursuant to section 62;

The tenant's October 3, 2023 application (336) pursuant to the Act is for:

- Cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the act, pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry, under section 70;

Preliminary Matter – Tenant's secondary claims

The tenant's applications include several secondary claims such as repairs, orders for the landlord to comply with the Act, and restriction of access against the landlord. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

The primary issue in both applications is whether the tenancy will end. I find that the tenant's claims under sections 32 (repairs), 65 (rent reduction), 27 and 62 (provide services or facilities), 62 (order that the landlord comply), and 70 (restricting landlord's entry) of the Act are not sufficiently related to the landlord's notices to end tenancy to be heard at the same time.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled, or is the landlord entitled to an Order of Possession?

Should the One Month Notice be cancelled, or is the landlord entitled to an Order of Possession?

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and the Evidence

The landlord's agent acknowledges receipt of the Proceeding Packages and is duly served in accordance with the Act.

The tenant states that they received the landlord's evidence the day before the hearing, on November 6, 2023. The landlord's agent states that, according to their records, the tenant received the evidence on November 1, 2023. Regardless, the respondent's evidence deadline was October 30, 2023. As the landlord failed to meet the evidence deadline as required by Rule of Procedure 3.15, I refuse to consider this evidence.

The landlord's agent stated that they had not received evidence from the tenant for this hearing. As the tenant's evidence comprises copies of the landlord's 10 Day and One Month Notices, the landlord is familiar with them. I verbally confirmed the details of the notices at the hearing.

Background and Evidence

According to the tenant, this tenancy started in July 2016 with a written tenancy agreement. Rent was \$2,200.00 per month due on the first day of each month, and there was a security deposit in the amount of \$1,100.00. The landlord's agent, hereafter referred to as GP, agrees that these are the terms of the tenancy agreement they inherited in July 2022 when they purchased the rental unit.

The tenant states the terms of the tenancy have changed because they reached an agreement with their prior landlord to pay \$1,500.00 per month. The tenant referred to another dispute application ending in 914, saying that at this November 7, 2022 hearing, the landlord agreed rent was \$1,500.00 per month. At the hearing for the current dispute, GP acknowledges that agreement.

The 10 Day Notice

Both parties confirmed that the 10 Day Notice is cancelled as the tenant has been paying \$1,500.00 per month in accordance with the agreement made at the hearing on November 7, 2022.

The One Month Notice

On September 20, 2023, the landlord issued a One Month Notice to end tenancy with a move-out date of October 23, 2023. The reasons for ending the tenancy were for a) the tenant putting the landlord's property at significant risk, b) the tenant has not done required repairs of damage to the unit/site/property/park, and c) breach of a material term that was not corrected within a reasonable time after written notice.

GP states that the property contains up to 11 derelict cars that are rusting, potentially containing oil and gasoline, and presenting a threat to the property in terms of toxic contamination and fire hazards. In addition to these, there are various items which GP described as trash or junk, which clutter the property.

The tenant acknowledges that there are about 10 vehicles on the property including car(s), trailer(s), tractor(s), and boat(s). The tenant states that they buy, repair, and resell vehicles, however, his current state of health has prevented him from doing so in recent times. However, the tenant states that the other trash and junk are not his, and that those items predate his tenancy.

GP further contended that the municipality has issued several notices related to the unsightliness and condition of the property, specifically referring to the vehicles and the junk. The tenant states that the notices from the municipality stem from complains generated by the landlord.

Analysis

Should the One Month Notice be cancelled, or is the landlord entitled to an Order of Possession?

Despite the efforts of all parties to reach a resolution at the hearing based on verbal testimony, the deliberations reached an impasse. The burden of proof to demonstrate the validity of the One Month Notice dated September 20, 2023, lies with the landlord.

As the landlord's testimony supporting the validity of the One Month Notice relied on written notice(s) alerting the tenant of the danger(s) posed to the property in relation to the vehicles, written notice(s) of a breach of material term(s), as well as written notice(s) from the municipality regarding issue(s) and/or violation(s) of by-law(s). I am unable to consider the evidence submitted by the landlord as it was provided to the tenant after the evidence deadline. In the absence of documentary evidence, the landlord has not been able to demonstrate that they had a valid reason to issue the One Month Notice. Thus, I must cancel the notice.

Conclusion

The 10 Day Notice and the One Month Notice, both dated September 20, 2023, are cancelled. This tenancy continues until ended in compliance with the Act.

The claims severed from the tenant's application under Rule 2.3 of the Rules of Procedure are dismissed with leave to reapply.

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: November 29, 2023