



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, FFL, OPU, OPC, MNU, FFL

Introduction

This hearing dealt with cross applications over two hearing dates. An Interim Decision was issued on November 23, 2023 and should be read in conjunction with this decision.

As set out in the Interim Decision, a Two Month Notice to End Tenancy for Landlord's Use of Property was withdrawn by consent. I dealt with a disputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and a disputed One Month Notice to End Tenancy for Cause ("One Month Notice") by way of this proceeding and considered the landlord's entitlement to a Monetary Order for unpaid utilities. All other issues were severed and dismissed with leave to reapply.

Both parties appeared and/or were represented or assisted at the hearing and the parties were affirmed.

Preliminary and Procedural Matter

At the outset of the reconvened hearing, I explored service of the tenant's Amendments upon the landlord, as requested and ordered at the first hearing session.

The tenant had submitted an Amendment to dispute the One Month Notice on September 28, 2023 and submitted an Amendment to dispute the 10 Day Notice on October 26, 2023. The landlord received evidence to demonstrate the tenant had sent the subject Amendments to the landlord on November 3, 2023.

The landlord was of the position that receiving the Amendments on November 3, 2023 exceeds the time limit for disputing the notices to end tenancy. The tenant pointed out that she had up to 14 days before the hearing to serve the Amendments, which she did. I noted that the Amendment form, prepared by the Residential Tenancy Branch with

reference to service requirements provided in the Rules of Procedure, indicates that an Amendment to be served to the other party “as soon as possible” but no later than 14 days before the hearing.

The Rules of Procedure do not set out a specific number of days that a party has to serve an Amendment like the original proceeding package which is to be served within three days. Rather, the Amendment is to be served “as soon as possible” and I find such a phrase open to interpretation and circumstance.

The tenant stated she served the Amendments with her evidence, on November 3, 2023. The tenant had compiled and served a significant amount of evidence. As such, I accept that would take a considerable amount of time to organize and compile and I was satisfied the tenant did not unreasonably delay in sending the Amendments. Also, considering the landlord had consented to being deemed served and had started to present evidence in support of ending the tenancy at the first hearing, I was of the view it would be most fair to continue on that basis. The landlord did not object. Therefore, I proceeded on the basis the One Month Notice and the 10 Day Notice were disputed notices to end tenancy.

Issue(s) to be Decided

1. Should the One Month Notice be upheld or cancelled?
2. Should the 10 Day Notice be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession?
4. Is the landlord entitled to a Monetary Order for unpaid utilities?
5. Award of filing fee(s).

Background and Evidence

The tenancy started on October 19, 2021. The tenant paid a security deposit of \$250.00 and is required to pay rent of \$500.00 on the 19th day of every month.

The living accommodation rented to the tenant under the tenancy agreement consists of two rooms. One of the rooms has an ensuite bathroom. The two rooms are not adjacent to each other. The room with the bathroom is on the main floor of the house with its own exterior entrance door and the other room is in an accessory building in the rear of the property behind the house. The main living unit of the house is very large and is also tenanted.

10 Day Notice

On September 25, 2023 the landlord had sent an email to the tenant with several gas bills attached. The landlord wrote in the email that the gas consumption for the property cost \$4315.3 over 23 months and the tenant's portion is 1/6 or \$719.22, due in 30 days.

The tenant had objected to paying the utilities in her responses sent to the landlord, via email.

On September 26, 2023 the landlord issued a 10 Day Notice indicating the tenant failed to pay \$719.22 in utilities that were demanded in writing on September 25, 2023.

The landlord's agent testified that natural gas powers the hot water tank that supplies hot water to the main living unit and the bathroom in the rental unit; however, the natural gas also fuels the gas stove top in the main living unit, and the radiant heat system in the main house only. The landlord confirmed that the tenant's use of gas would be for her use of hot water supplied to her ensuite bathroom. The landlord explained there are six bathrooms in the house so he apportioned 1/6 of the gas bills to the tenant.

I noted that the tenancy agreement provides that "water" is included in rent but "natural gas" is not. I noted there was nothing in the tenancy agreement indicating the parties had agreed that the tenant would be responsible for 1/6 of the gas bills, or any other percentage. The landlord responded that it was uncertain when the tenancy started as to the occupancy of the main house.

The landlord explained that the natural gas bills are in the name of the tenant renting the main living unit and the other tenant only wants to pay 5/6 of the gas bills because of the rental unit.

The landlord's agent claimed he had spoken to the tenant at least twice, in September 2022 and early 2023 about paying 1/6 of the gas bills and both times the tenant did not respond to him. The tenant denied there was ever any verbal conversations about paying 1/6 of the gas bills.

The tenant was of the position that water is included in rent. Further, the gas bills include heat for the main house. The tenant was agreeable to paying a share that more accurately reflects her usage of gas but that has not been determined yet.

One Month Notice

The landlord issued the One Month Notice on September 28, 2023 indicating the following reasons for ending the tenancy:

- 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 has not done required repairs of damage to the unit/site/property/park

In the Details of Cause on the One Month Notice, the landlord wrote the following details:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): (1),The tenant has cluttered the already narrow side alley, which is designated as a fire escape route, with a significant amount of items. This prevents smooth fire rescue and evacuation efforts. Even after multiple requests to clear the obstructions, the tenant refused and further intensified the problem by propping a wooden stick behind the 6' high metal side alley gate, preventing it from opening, jeopardizing potential fire rescue operations. This places all the tenants in the house at risk, making it challenging to evacuate swiftly and safely in the event of a fire. (2),unjustly prohibited fellow tenants from using the A/C (3),damaged the mirror in the bathroom and created a large hole in the wall beside the bed

Below, I have summarized the parties' respective positions concerning the three issues described above:

1. Side alley

The landlord submits that the tenant has blocked the narrow alley, which is a fire escape for all occupants of the house, by cluttering up the alley with the tenant's possessions. The landlord noticed this on a number of occasions and told the tenant to keep the alley accessible. On July 3, 2023 the landlord observed several items in the

alley again and left a note on a piece of cardboard on a chair by the door the tenant's door. Despite the request, the tenant has continued to have possessions in the alley.

In addition, the gate to the alley is to be kept unlocked as it is a fire escape route. There had been a lock on the gate but it was removed. Then the tenant placed a tall chair against the gate, on the inside, plus a pole and a chain in an attempt to block the gate so that people could not open the gate. Despite instructing the tenant to leave the gate unobstructed, she continued to block the gate. In October 2023 an inspector came to view the property and they could not open the gate because it was blocked or secured in some way from the inside by the tenant.

The tenant acknowledged she had possessions in the alley when she was spring cleaning and she left the items outside in the alley until they dried and then she returned them inside.

The tenant is of the position the landlord is exaggerating the number of possessions she had in the alley. One photograph the landlord submitted shows there is a chair, which belongs to the landlord, in the alley, plus some shoes and a cellphone belonging to the tenant.

The tenant acknowledged that she had blocked the gate as she believed the side alley was her exclusive use area and she wanted security in this area. The tenant removed the stick and chain on October 30, 2023.

2. Prohibiting other tenants from using A/C

The landlord submitted that the tenant has been interfering with the other tenant's ability to use the A/C. The tenant intimidates, makes threats and false claims in an attempt to stop the use of the A/C. The tenant claimed she was getting burned eyes by the air coming from the A/C unit and the tenant also tried to make a claim for compensation against the landlord. The A/C unit was inspected and found to be working properly and a certificate was issued to demonstrate this. Then, the tenant threatened to call the city and have the house's occupancy permit pulled. The landlord had some plywood placed in an attempt to direct hot air away from the rental unit but the tenant cannot interfere with the other tenant's use of the A/C.

The tenant acknowledged that she raised the issue of the A/C unit in a previous Application for Dispute Resolution she had filed seeking emergency repairs and the Arbitrator concluded the request was not in the nature of an "emergency repair".

3. Damage to rental unit

The landlord submitted that the tenant broke the bathroom mirror and kicked a hole in the drywall. The tenant has not yet had these matters repaired.

The tenant stated she would have these two repairs completed by the end of December 31, 2023.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

10 Day Notice

The landlord seeks to end the tenancy based on non-payment of 1/6 of the gas bills; however, I find the landlord did not have a basis to seek 1/6 of the gas bills from the tenant under the tenancy agreement.

The tenancy agreement provides that the tenant is to be provided “water” as part of her rent payment but that rent does not include “natural gas”. Since the water is heated by natural gas, I accept that the tenant could be held responsible to pay her share of the natural gas consumed to heat the water she uses.

Typically, parties will attempt to estimate the tenant’s share of utilities when the tenancy forms and record their agreement in the tenancy agreement. The parties did not do that and the tenancy agreement is silent as to how the gas bills will be allocated to the rental unit tenant.

Therefore, I find the landlord’s demand that the tenant pay 1/6 of the natural gas bills is not supported by the tenancy agreement or the tenant’s agreement that 1/6 was a reasonable allocation of her usage.

Having heard that gas powers the heating system in the very large main living unit, and the stove top in the main living unit, in addition to the shared hot water tank, I find it obvious that the landlord’s apportionment based on the number of bathrooms only is woefully unfair and unconscionable to the tenant as it does not take into account the

gas used to heat the very large main living unit, or the cooking done on the gas stove in the main house.

Based on the above, I cancel the 10 Day Notice and I do not issue the landlord a Monetary Order for any unpaid gas bills.

The landlord may be entitled to recover the tenant's consumption of natural gas to heat the hot water that she uses but it is unconscionable to require a tenant to pay for utilities used by another tenant or the landlord in a different living unit. The issue of shared utilities and unconscionability is provided in Residential Tenancy Policy Guideline 1.

As I stated during the hearing, I leave it to the parties to propose a reasonable allocation of the gas bills with a view to reaching an agreement. If the parties cannot reach an agreement the landlord may pursue compensation against the tenant in another Application for Dispute Resolution by demonstrating a reasonably fair allocation of the natural gas bills.

One Month Notice

The One Month Notice has three different reasons for ending the tenancy. The issue of greatest concern, in my view, is the blocking of the gate at the end of the side alley since a locked or blocked gate prevents timely escape from the back yard and side alley in a quick manner.

The landlord provided the site plan for the property and I find the back yard and the side alley are common property. The alley is especially narrow and runs the length of the very large house and a fence. Should the house catch on fire or experience some other natural disaster, and occupants of the house escape through a rear door, it is entirely possible the occupants would have to escape the backyard to get away from a burning house or house at risk of collapse. As seen on the site plan, the only way to escape the back yard is through the side alley and through the gate.

The landlord had the lock on the gate removed but the tenant has blocked the gate with a high chair, a stick and wrapped a chain around the gate and fence. I am of the view that having to take time to clear a chair, stick and the chain, especially in a panic situation, would put an occupant trying to escape a hazard at significant risk.

Although the gate used to have a lock, the landlord removed it. The tenant started writing letters to the landlord demanding the lock be restored but the landlord refused.

Even after the landlord issued the One Month Notice, which tenant received on September 27, 2023, it clearly states the blocking of the gate poses a significant risk to the property as fire rescue efforts could be hampered as well as significant risk to occupants trying to evacuate in a swift and safe manner. Yet, the tenant did not clear the blockage of the gate for at least another month, until October 30, 2023. I find the tenant's conduct unreasonable and without regard for the health and safety of other occupants of the property or the property itself.

In light of the above, I find I am satisfied there are sufficient grounds to end the tenancy because the tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord and
- put the landlord's property at significant risk.

Accordingly, I dismiss the tenant's request that I cancel the One Month Notice.

Upon review of the One Month Notice, I am satisfied it meets the form and content requirements of section 52 of the Act. Therefore, I find the landlord entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective December 31, 2023 in recognition the tenant paid rent for December 2023.

I award the landlord recovery of the \$100.00 filing fee paid for their application.

Conclusion

The 10 Day Notice is cancelled and the landlord is not entitled to a Monetary Order for the utilities as claimed.

The tenant's request for cancellation of the One Month Notice is dismissed and the landlord is provided an Order of Possession effective on December 31, 2023.

The landlord is awarded recovery of the \$100.00 filing fee. I provide the landlord with a Monetary Order in the amount of \$100.00.

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: December 8, 2023

Residential Tenancy Branch