

DECISION

Introduction

This hearing dealt with the Tenant's two Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenants' second application was for:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

J.K., A.Y., D.S., and C.N. attended the hearing for the Tenants.

D.B. and M.K. attended the hearing for the Landlords.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

I informed the parties at the outset that I was only going to hear only the most urgent claims to ensure we finished on time. In the circumstances, I determined the most urgent claim to be whether the tenancy would continue and if not, whether the Landlord was entitled to an Order of Possession and Monetary Order for unpaid rent.

Consequently, the Tenants' remaining claims, which are as follows, were dismissed with leave to reapply:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on September 1, 2023, with a monthly rent of \$3,300.00, due on the first day of the month, with a security deposit in the amount of \$1,650.00, and a pet damage deposit in the amount of \$1,650.00.

On January 30, 2024, a One Month Notice to End Tenancy for cause was delivered to the Tenants. In it the Landlords alleged that the Tenants significantly interfered with or unreasonably disturbed the Landlord and put the Landlord's property at risk.

The Landlord claimed that the Tenants either vindictively or out of negligence, turned off the water to the Landlord's residence, which adjoins the Tenants rental unit. As a result, the Landlords were deprived of running water for eleven days and incurred significant expense and inconvenience as a result.

The Landlords said that they were informed on January 11, 2024, that the Tenants pipes had frozen. When the Landlords did not have water the following day, they assumed their pipes must have been frozen as well.

The Landlords said that when they spoke to a plumber eleven days later, the plumber told them that there was no way their pipes had frozen, and that someone must have turned off a valve.

The Landlords said that they followed up with the Tenants who confirmed that they had indeed turned off valves. DB said that after she emailed the Tenants requesting that they turn the water valve on, they did not do so for an hour and a half. DB also said that her office is below the Tenants' kitchen, and that following her request she heard one of the Tenants tell the other to "take your time".

The Tenants argued it was an honest mistake. The Tenants said that when their water lines froze on January 10, 2024, they turned off the water to their unit based upon their understanding that this was necessary to preserve the property. They did not know that they had access to the Landlord's water line and believed that they had turned off the water to an external garden hose based upon where the line terminated.

When the issues concerning the frozen pipes were resolved, the Tenants did not turn the valve back on as they continued to believe the line was for an external garden hose.

DS said that the reason for the hour and a half delay between the time that the Landlord sent the email requesting that he turn the water valve on and when he actually did so was because he does not receive email notifications and did not see her reply for this period of time.

DS added that he turned the water as soon as he received the email and that they apologized to the Landlord.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a Landlord may issue a Notice to End Tenancy for Cause to a Tenant if the Landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the Tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the Tenant files an application to dispute the notice, the Landlord bears the burden to prove the grounds for the One Month Notice.

The One Month Notice was delivered to the Tenants personally on January 30, 2024. I find that the Tenants were served January 30, 2024. As the Tenants disputed this notice on January 30, 2024, I find that the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

I find that the Tenants did not significantly interfere with or unreasonably disturb the Landlords or the Landlords' property.

I find the Tenants' explanation that they were not aware that they had access to the Landlord's water valve, and that they thought they had turned off a line going to an external garden hose, to be credible. I also find the Tenant's decision to turn off the water lines for the purpose of preserving the Landlord's property to be credible, and a reasonable and responsible reaction. I find DS' explanation that the delay in turning on the water following the Landlord's email to be due to the fact that he does not have email notifications to be plausible.

I find the Landlords' decision to wait eleven days before seeking the input of a plumber with respect to their lack of water to have been an inadequate response. In particular, I note that the plumber they spoke with was able to diagnose the problem quickly and accurately. I find that the Landlord's ought to have made additional inquiries and sought the assistance of a plumber sooner, and that the ensuing consequences are a result of their failure to do so.

I also find that the Landlord's decision to request the Tenant turn on their water line via email was not most efficient method for communication when expediency is required. I note that the Landlords live adjacent to the Tenants. I find that in the circumstances, the Landlord ought to have considered following up with a telephone call or knocking on the Tenants door when she did not receive a response to her email.

I find that the Landlord has not met their burden of proving that they had sufficient cause to issue the One Month Notice to the Tenant and end the tenancy.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of January 29, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

In accordance with section 72 of the Act, I order the Tenant to deduct \$100.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of January 29, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The Tenant shall deduct \$100.00 from their next rent payment in full satisfaction of the monetary award for the 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 Act.

Dated: February 28, 2024

Residential Tenancy Branch