



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNC-MT, PSF x 2

Introduction

This hearing dealt with the Tenants' two Applications for Dispute Resolution (applications), both seeking remedy under the *Residential Tenancy Act* (Act) for the same issues, which are:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice/One Month Notice) issued by the Landlord
- an order extending the time to file an application disputing the Notice issued by the landlord
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue –

The Tenants filed their first application on November 16, 2024, naming the Landlord/owner RL as Respondent, and when confirming service of the Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, and

evidence (Proceeding Package) testified that they did not serve the Landlord with their application.

When confirming service of their second application seeking cancellation of the same One Month Notice, but now amended to name the Landlord's agent as the Landlord/Respondent, filed on November 25, 2024, the Tenants said the Landlord's agent was served at their office on November 26, 2024. I note the Landlord's agent was named as Respondent in the second application. The agent signed the One Month Notice.

The Landlord's agent confirmed receiving an application, but it was the Tenant's first application, not the second application that the Tenants claimed was not served. I note the person serving the application was the Tenants' mother, who did not attend the hearing.

Although the Act and the Rules require that applicants give the other party their proceeding package within 3 days of being provided the documents, there is no provision that the application must be dismissed if the Applicant does not comply.

At the hearing, the Landlord's agent did raise an objection to not being served within the required time. The Landlord's agent provided a significant amount of evidence within the required time and I find proceeding with the hearing on the Tenants' first application was not prejudicial to the Landlord.

For the reasons noted above, I find the Tenants submitted insufficient evidence that they served their secondary application for dispute resolution to the Landlord as required by the Act, and for this reason, I dismiss the Tenants' secondary application, without leave to reapply.

The Tenants' first application was filed on time within 10 days of receiving the One Month Notice. For this reason, I dismiss the Tenants' request for an extension of time to file their application.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the Landlord's One Month Notices? If not, is the Landlord entitled to an order of possession of the rental unit?

Are the Tenants entitled to an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act?

Background and Evidence

I heard evidence at the hearing that indicates the tenancy began on October 1, 2024, with a monthly rent of \$1400 and a security deposit of \$700 being paid by the Tenants. The rental unit is located above a local café.

Filed in evidence by both parties was the One Month Notice. The Notice was dated November 8, 2024, for an effective move-out date of December 8, 2024. The Tenants confirmed receipt of the Notice on November 8, 2024, the date they were served by the Landlord by attaching it to the Tenants' door. As rent is due on the first day of the month, the effective move-out date is automatically changed to December 31, 2024, to comply with section 47(2) of the Act.

The Tenants wrote in their application the following:

no supporting proof of what we are accused for, the reasons we are being evicted are just based off of complaints made by downstairs tenants, who even made complaints of noise the day we moved in on October 2nd, to which we were moving in furniture and had accidentally put down a heavy chair allegedly too loudly, we have also been denied access to the only garbage bins available. I have not had anytime to fill out the application as i have been working consistently since receiving eviction.

The causes listed on the One Month Notice were:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the details of causes written on the Notice, the Landlord wrote the following:

The Tenant or a person permitted is causing disturbance of the business tenant downstairs during business hours, with dates of incidents. Further the Tenant or person permitted were not parking in the assigned parking, with dates of incidents, and threatening the employees of the business tenant below, by standing in the entrance door and sticking out their tongue. And lastly, the Tenant or person permitted is not discarding their garbage properly, leaving the garbage out for the employees below to clean or birds/wild animals to spread.

Pursuant to the Rules, the Landlord's agent proceeded first in the hearing to provide evidence in support of the Notice.

As to the breach of a material term, the Landlord referred to term 20, "Parties and Other Loud Noises", which requires the Tenants to respect the rights of neighbours to peace and quiet. The agent said that the Tenants' mother, SL, is living with the Tenants, and on October 20, 2024, it was reported that SL had been making loud noises and disturbing others, which included the café customers and employees.

As to the other two causes listed on the One Month Notice, the agent said that the café employees had complained about the Tenant parking in the disabled parking spot for the café patrons and left garbage by the café's garbage receptacle.

The Landlord said that the Tenants were provided a specific parking spot and they were not parking there. Further, the restaurant tenant pays for garbage collection and agreed that the Tenants could dispose of their garbage in their bins. However, the Tenants were to ask the café tenant for a key to the garbage receptacle and they did not.

When asked, the Landlord's agent said that since the One Month Notice was issued, there have been no further problems regarding the parking and garbage disposal, but the café employees continue to complain about the noise levels, which causes complaints by their customers. The agent said the building was old and wood framed, and not sure if there was insulation between the floors. The agent indicated that the complaints centered around the actions of the Tenants' mother, who resides with them.

The Landlord's evidence included text messages from someone connected to the café and photos.

The Tenant said, in response, that the first complaint by the downstairs tenant about noise is when they moved in and accidentally dropped a heavy chair. The Tenant said they do play music, but did not play it purposely loud, and that they have turned it down. The Tenant said they are in an old building and that the bedrooms and living room are carpeted, but they did not like them, so they have put rugs over the top of the carpet.

As to the parking, the Tenant said that one night a van had parked in their designated spot, so they parked next to it. As to the garbage, the Tenants were provided garbage collection in their tenancy agreement, and were not able to use the outside disposal bin.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Upon review of the One Month Notice to End Tenancy, I find the Notice meets the requirements of the Act as to form and content, completed in accordance with the requirements of section 52 of the Act.

The Landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to support the causes listed. When multiple causes are listed, it is not necessary for the Landlord to provide sufficient evidence for all causes.

As to the first cause listed, tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, I find the Landlord's evidence falls short in proving this cause.

The evidence provided consisted of text messages from someone representing the café below, which was unsubstantiated at the hearing by direct testimony or signed, witnessed statements or affidavits. The Landlord's agent provided no evidence that they personally investigated the incidents to see whether the noise was excessive or disturbing and to present firsthand knowledge of the alleged events.

For these reasons, I find the Landlord submitted insufficient evidence to support this cause to end the tenancy.

As to the second cause listed, tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, I find the Landlord's evidence falls short in proving this cause. In my view, I find this cause is interrelated to the first cause, for which I find insufficient evidence by the Landlord. Further, I find the Landlord submitted insufficient evidence that the Tenants' mother's conduct rose to a level that constituted significant interference or unreasonable disturbance necessary to prove in ending this tenancy.

As to the third cause listed, breach of a material term of the tenancy agreement, Tenancy Policy Guideline 8 requires the Landlord give written notice of the claimed breach, that the written notice should inform the tenant that there is a problem, that the problem is a breach of a material term, that the problem must be fixed by a deadline included in the letter and that the deadline be reasonable and if not, the landlord will serve a notice to end the tenancy.

For these reasons, I find the Landlord submitted insufficient evidence that the Tenants were given written notice of an alleged breach, a requirement under the Act.

For this reason, I find it was unnecessary to determine whether the term was material.

As I have found that the Landlord submitted insufficient evidence of any cause listed on the Notice, I find the Landlord's One Month Notice to End Tenancy for Cause, dated November 8, 2024, for a corrected effective move out date of December 31, 2024, is not valid and not supported by the evidence, and therefore has no force and effect.

I therefore grant the Tenants' first application for cancellation of the One Month Notice.

I **ORDER** that the Notice be cancelled and further order that the tenancy continue until ended in accordance with the Act.

Although I have cancelled the One Month Notice for the reasons stated, I caution the Tenants that they are responsible for their mother's behaviour and conduct and that if there are any further incidents for which the Landlord can prove, the Landlord may issue the Tenants another One Month Notice, and use this Decision as evidence to support their Notice.

Are the Tenants entitled to an order for the Landlord to provide for services or facilities required by the tenancy agreement or law?

There was insufficient time at the hearing to have a complete consideration of this issue. However, when considering this issue, where the Tenants requested access to garbage collection, I find the Tenants are now aware they are to request a key to the café's garbage disposal bin so that they can have garbage collection.

For this reason, I find it unnecessary to consider this request at this time. I dismiss the Tenants' request, with leave to reapply, should issues arise in the future.

Conclusion

The Tenants' application for cancellation of the One Month Notice was successful.

The Notice issued by the Landlord has been ordered cancelled and is of no force or effect.

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

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 14, 2024

Residential Tenancy Branch