# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, FFT, OLC, MNDCT, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Cancellation of two One Month Notices to End Tenancy for Cause (the One Month Notices);
- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- Compensation for monetary loss or other money owed;
- An order restricting or setting conditions on the Landlords right to enter the rental unit; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenants, the Landlord P.M., and a co-owner of the rental unit, L.M. (collectively referred to as the Landlords), all of whom provided affirmed testimony. The Landlords acknowledged receipt of the Tenant's Application and the Notice of Hearing by registered mail, sent on August 28, 2020. Pursuant to section 90(c) of the Act, I deem these documents received five days later, September 2, 2020. Both parties acknowledged receipt of each other's documentary evidence by registered mail within the evidence deadlines set out in the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure).

Based on the above, and as neither party raised concerns regarding service, receipt, or the acceptance of the above noted documentary evidence by me at the hearing, the hearing therefore proceeded as scheduled and the documentary evidence before me from both parties was accepted for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenants sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel two separate One Month Notice's, I find that the priority claims relate to whether the tenancy will continue or end. I find that the other claims by the Tenants are not sufficiently related to the notices to end tenancy or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- Authorization to assign or sublet the rental unit as the Landlord's consent has been unreasonably withheld;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- A monetary order for money owed or damage or loss under the Act, regulation or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notices and recovery of the filing fee.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Preliminary Matter #3

At the outset of the hearing I had the parties clarify their correct legal names and amended the Application accordingly. The respondent K.M. was also removed as a respondent by request of the Tenants as they were not served a copy of the Application, the Notice of hearing, or any of the Tenant's documentary evidence.

Although both P.M. and L.M. are referred to collectively as the Landlords throughout the decision as they co-own the rental unit, only P.M. is listed as a landlord in the tenancy agreements. As a result, only P.M. will be listed as the Landlord in any Order of Possession or Monetary Order granted.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of one or both of the One Month Notices?

If the Tenants are unsuccessful in having both One Month Notices cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

There was agreement between the parties that the tenancy began on June 1, 2018, and that over the course of the tenancy, two written fixed term tenancy agreements have been entered into, copies of which were provided for my consideration. Both tenancy agreements in the documentary evidence before me state that rent in the amount of $1,000.00 is due on the first day of each month and that $550.00 in deposits were to be paid ($500.00 as a security deposit and $50.00 as a pet damage deposit). During the hearing the Landlords confirmed that these deposits were paid, which are still held in trust by them.

Although there were multiple written tenancy agreements signed, the parties agreed that the terms and conditions remained the same between the tenancy agreements, except for an amendment to the second tenancy agreement indicating that the fridge in the rental unit belongs to the Tenants.

The Landlords stated that although the Tenants pay their rent on time, there have been ongoing issues with the state of the property and breaches to the terms of the tenancy agreement since the start of the tenancy. The Landlords stated that although the tenancy agreement prohibits unlicensed vehicles on the property, the Tenants have had up to seven vehicles on the property at one time, up to five of which were unlicensed. Although the Tenants agreed that they have had several unlicensed vehicles on the property during the tenancy, they stated that most of these have been sold or removed, and that one unlicensed vehicle referred to by the Landlords is actually licensed part of the year.

The Landlords stated that although the tenancy agreement also prohibits building anything on the property without the Landlords consent, the Tenants have placed a garden shed, and two temporary vehicle shelters on the property and built a lean-to structure, all without their consent. Although the Tenants agreed that these structures existed, they argued that the garden shed was not built by them on the property and was in fact brought with them at the start of the tenancy from their previous residence. The Tenants agreed that two temporary vehicle shelters have been erected in the past few months without the Landlords permission but stated that they did not consider this building without the Landlords' consent contrary to the tenancy agreement as these are temporary structures purchased at a local store and are impermanent in nature. They also stated that these structures have been necessary for them to sort their possession in preparation to move. Finally, although the Tenants agreed that a small roof had been built over a portion of the deck without consent of the Landlords, they denied that it was a lean-to and stated that it was necessary to keep that area free of ice and snow in the winter so that they could access tools.

The Landlords stated that the Tenants have also stored vehicle gas tanks, vehicle radiators, propane tanks and jerry cans improperly on the property, which represents a significant fire safety risk to the property as well as a significant risk of contamination to the land, which is in the agricultural land reserve (ALR). Further to this, the Landlords stated that there is garbage and refuse all over the property. The Tenants agreed that there are vehicle gas tanks, vehicle radiators, jerry cans for gas, and propane tanks on the property but denied that they represent either a fire safety risk or a contamination risk to the property. The Tenants stated that the gas tanks and radiators are empty, and

therefore do not represent any fire risk or risk of land contamination. The Tenants stated that the propane tanks are for their BBQ and trailer and that the jerry cans are for gas they need for use on the property, as it is in a remote area and there is not a gas station close by. The Tenants stated that they are aware of fire safety and that the property is not at risk of fire.

Although the Landlords argued that there was extraordinary damage to property, this argument related to their position that the Tenants are contaminating the land, fire risk, and the unsightliness of the property. The Tenants denied that any extraordinary damage to the property or the rental unit exists but agreed that the property needs to be cleaned up.

Finally the Landlords argued that the Tenants have significantly interfered with or unreasonably disturbed them by failing to comply with the terms of their tenancy agreement respecting unlicensed vehicles and building without consent, as well as failing to maintain the property in a reasonable manner, as this has caused significant difficulties between the Landlords and the property owner, who has subsequently increased their rent and requested that the tenancy be ended. The Landlords stated that they have also had to put the rental unit up for sale.

Although the Tenants acknowledged that the property needs to be cleaned up, they denied any prior knowledge of the difficulties between the Landlords and the property owner and stated that they regularly maintain the rental unit and the property by doing routine maintenance and lawn mowing etc.

The Landlords stated that as a result of the above issues, and the Tenants' failure to address them despite repeated requests that they do so since the start of the tenancy in 2018, two separate One Month Notices were served as set out below.

The Landlords stated that the first One Month Notice (the First Notice) was sent to the Tenants by registered mail on August 13, 2020, and provided the registered mail tracking number. During the hearing the Tenants confirmed receipt on August 16, 2020. The First Notice is signed and dated August 11, 2020, has an effective date of October 1, 2020, and states that the reason for ending the tenancy is that the Tenants have breached a material term of the tenancy agreement which has not been corrected within a reasonable time after written notice to do so was given.

Under the details of cause section of the First Notice it states the following:

| Details of Causes(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):<br>Tenancy agreement states: no unlicensed vehicle and no building without landlords (Paul and Lorraine)agreement. June 2018 tenants (Dave and Marlene) brought in two unlicensed undrivable pick up trucks, one unlicensed car to restore, a shed, excessive storage and refuse. These have not been agreed upon, as the land is zoned RU3 for grain and forage agricultural land, not zoned as a storage facility. Tenants (Dave and Marlene) were told by landlords (Paul and Lorraine) to remove them that same month. June 1, 2019 about 10:30am to renew the lease, tenants (Dave and Marlene) were told again to remove unlicensed vehicles, excessive storage and refuse off the land and send it to a storage facility. November 16, 2019 at 10am landlords (Paul and Lorraine) came to do an inspection, and the same two unlicensed pick up trucks, excessive storage and refuse were still there, tenants (Dave and Marlene) were told again to remove them. May 25, 2020 tenants were given a written notice stating these facts. August 7, 2020 at 1pm same two unlicensed pick up trucks, excessive storage and refuse are still there. |

The Landlords stated that the second One Month Notice (the Second Notice) was personally served on the Tenants on August 21, 2020, and the Tenants confirmed personal receipt on this date at the hearing. The Second Notice is also signed and dated August 11, 2020, and has an effective date of October 1, 2020, however, additional grounds for ending the tenancy were listed as follows:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
- the Tenants have breached a material term of the tenancy agreement which has not been corrected within a reasonable time after written notice to do so was given.

The same details of cause listed above were given.

The primary focus of the Tenants submissions were that they lack physical capability to do more about the state of the property as the result of several motor vehicle accidents and that although they are looking for alternate accommodation and wish to move, they simply need more time.

The Landlords sought an Order of Possession for the end of November 2020, if the One Month Notices are upheld, as rent for November has been paid and they recognize the

Tenants will need some time to remove their possessions, even though the effective dates of both notices to end tenancy have passed.

Both parties submitted documentary evidence in support of their positions.

Analysis

Based on the documentary evidence before me and the testimony of the parties during the hearing, I am satisfied that the First Notice was served on the Tenants by registered mail on August 16, 2020, and that the Second Notice was personally served on the Tenants on August 21, 2020.

Section 46(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the landlord bears the onus to prove that they have grounds for ending a tenancy when a tenant disputes a notice to end tenancy.

The Landlords sought an end to the tenancy for extraordinary damage, however, both parties agreed during the hearing that the Tenants had not damaged the rental unit and I find that the Landlords' arguments in relation to extraordinary damage to the residential property were speculative in nature and centered on their belief that the Tenants' behaviour on the property could result in extraordinary damage, not evidence or arguments that the residential property has in fact already sustained extraordinary damage. As a result, I find that the Landlords have failed to satisfy me on a balance of

probabilities that the Tenants have caused extraordinary damage to either the rental unit or the residential property.

Although the Landlords sought to end the tenancy on the basis that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of the Landlords and put the Landlords' property at significant risk, I am not satisfied that this is the case. The Landlords argued that the Tenants are placing ALR land at risk of fire and contamination due to their storage of jerry cans, propane tanks, and vehicle parts on the property; however, the Tenants denied that any such risks exists, and I do not find that the mere presence of vehicle parts, jerry cans, and propane tanks, some of which are routine items found on most properties, represents an inherent risk to either ALR land or the residential property. Ultimately, I find the Landlords' arguments in this regard speculative and unconvincing in nature as they submitted no documentary evidence to support their stated beliefs that any such risks exist, other than photographs of these items on the property.

While the Landlords argued that the Tenants have significantly interfered with or unreasonably disturbed them, the basis for this argument appears to be that a dispute has now arisen between the Landlords and a family member who owns the property regarding the state in which the property is being kept by the Tenants. As the Tenants have no direct control over the relationship between the Landlords and the property owner, I find that this an insufficient basis for ending the tenancy.

Finally, the Landlords sought to end the tenancy for breach of a material term of the tenancy agreement because the Tenants have had uninsured vehicles on the property and have either built or erected structures on the property without consent. Although the tenancy agreement prohibits unlicensed vehicles and building on the property without the consent of the Landlord, there is no indication in the tenancy agreement itself that these are material terms of the tenancy agreement and the parties could not agree during the hearing that they were.

Policy Guideline 8 states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. As there is no indication in the tenancy agreement itself that the above terms constitute material terms of the tenancy agreement and the parties did not agree during the hearing that they were, I find that they are not. As a result, I find that the Landlords do not have cause to end the tenancy for a breach of a material term on the basis that the Tenants have unlicensed vehicles and unauthorized buildings/structures on the property.

Based on the above, I am not satisfied by the Landlords that they have grounds to end the tenancy as stated in the First and Second Notice. I therefore grant the Tenants' Application seeking their cancellation.

Despite the above, I find that the Tenants are still prohibited from having any unlicensed vehicles on the property and from building on the property without the Landlords' consent under the tenancy agreement, which I find includes the bringing or erecting of structures, whether permanent or impermanent in nature, on the property. Pursuant to section 62(3) of the Act, I therefore order the Tenants to comply with the terms of their tenancy agreement and remove any unlicensed vehicles, a lean-to structure, a garden shed and two vehicle shelters from the residential property within 90 days of the date of this decision. Should the Tenants fail to comply with this order, the Landlords may seek an end to the tenancy pursuant to section 47(l) of the Act.

As the Tenants were successful in their Application, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to make a one time deduction in the amount of $100.00 from the next months rent payable under the tenancy agreement in recovery of this amount.

Conclusion

I order that the First and Second Notices are cancelled and that the tenancy therefore continue in full force and effect until it is ended by one of the parties in accordance with the Act.

I authorize the Tenants to make a one time deduction in the amount of $100.00 from the next months rent payable under the tenancy agreement in recovery of the filing fee.

Although I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the Act and section 25 of the Interpretation Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither my authority to render this decision nor the validity of the decision itself are affected if this decision has been rendered outside of the timelines set out above.

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: December 7, 2020

Residential Tenancy Branch