Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

On September 20, 2020 the tenant filed an Application for Dispute Resolution seeking an order to cancel the One Month Notice to End Tenancy for Cause issued by the landlord on September 11, 2020. On this Application they also applied for an order granting compensation of the Application filing fee.

On October 19, 2020 the tenant filed an Application for Dispute Resolution seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One-Month Notice") issued by the landlord on October 17, 2020. They also applied for an order that suspends or sets conditions on the landlord's right to enter the rental unit, and compliance with the legislation and/or the tenancy agreement. Additionally, they applied for an order granting compensation of the Application filing fee.

With the tenant bringing separate applications concerning the same dispute, these matters were linked together by this office on October 23, 2020. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 16, 2020. The matter was reconvened on December 2, 2020 for the purpose of hearing additional submissions on jurisdiction.

Both the landlord and tenant attended the conference call hearing. In the initial hearing, the landlord attended with a representative. At the outset of the initial hearing I explained the process and both the landlord and the single tenant had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the initial hearing, both parties confirmed receipt of the other's prepared documentary evidence. On this basis, the hearing proceeded.

Preliminary Matters

The landlord issued the first notice to end tenancy on September 9, 2020, served on September 10. In the initial hearing, they provided that they omitted one specific reason for ending the tenancy on page 2 of that document. This is that the "tenant . . .has caused extraordinary damage to the unit/site . . ."

Given the landlord's reason for issuing the subsequent One-Month Notice, as a correction to the initial notice to end tenancy, I so order the notice issued by the landlord on September 9, 2020 is cancelled and of no force or effect. I find the landlord's own admission equates to an acknowledgement that the notice does meet the specific requirements of form and content specified by s. 52 of the *Act*. Namely, the document does not state the grounds for ending the tenancy as per s. 52(d).

As the tenant was successful in the initial application they filed on September 20, 2020, I find the tenant is entitled to recover the $100.00 filing fee paid. For this, I authorize the tenant to withhold the amount of $100.00 from one future rent payment.

With consideration to the circumstances and contention between the parties, I have determined that the One-Month Notice from October 17, 2020 is the primary matter of urgency. Both parties' submissions concern reasons for ending the tenancy and the validity thereof. Therefore, I find the tenant's claims for other orders (suspending the landlord's right to enter, and overall compliance) are outside the scope of the immediate matter concerning validity of the One-Month Notice. By Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss these claims. Herein I do not consider evidence related to these claims. The tenant has leave to reapply on these separate issues in a separate hearing process.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice?

Should the tenant be unsuccessful in cancelling the One-Month Notice, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement as part of their evidence. This shows that parties signed the agreement on August 6, 2018 for the tenancy starting on August 15, 2018. The primary purpose of the tenancy was for a residential purpose.

The tenancy is shown to be for a fixed term ending on August 15, 2020, thereafter, reverting to a month-to-month agreement. The rent amount is $3,800 payable on the first of each month. The agreement shows the tenant paid a security deposit of $1,900 on August 15, 2018. The tenant paid an additional pet damage deposit of $1,900 on October 31, 2019.

Based on the information submitted by both parties in the follow-up December 2, 2020 hearing,

The landlord issued the One-Month Notice on October 16, 2020, specifying the tenant's move-out date as November 30, 2020. The landlord served the notice in person to the tenant on October 17, 2020. On page 2 of the document, the landlord indicated the following reasons:

- □ Tenant is repeatedly late paying rent
- □ Tenant . . . has
    - □ put the landlord's property at significant risk
- □ Tenant . . .has caused extraordinary damage to the unit/site or property/park

On page 3 of the document, the landlord provided detail. This is for the "unauthorized, damaging, and dangerous activities." These are: "reckless logging, digging (which broke the septic pipes), building, open fire in the bushes close to the house without any fire guard." Additionally: "The tenants were demanded 6 times over 2 months to remediate and restore the land." And: "The tenants continue to threaten the landlords with potential lawsuits and call the landlords "mentally unstable.""

In their submissions in the hearing, the landlord spoke to these issues as follows:

- the issue began when the landlord visited to inspect on June 10, 2020 – they discovered damage due to the tenant "using soil and trees for farming activities" – the landlord noticed tree cutting and provided pictures of this in the evidence
- they brought this to the tenant's attention earlier in May
- from June 10 to July 27 the landlord visited and made further inspections to ensure the tenants were starting to restore the land and property to its prior state
- on July 27 the landlord visited and took pictures – this is in the evidence to show the tenants "were not repairing and still proceeding with their move to build up farming property"
- from this date through to September the relationship deteriorated, to the point where police had to be present when the landlord visited the property
- they issued the One-Month Notice on the basis of "extraordinary damage" for which they provided an "excessive amount of evidence"
- evidence submitted includes a movie clip of an unattended fire pit, and there were incidents of aggression/harassment by the tenant
- the landlord also included a document regarding a potential fine from the municipality over the cutting of trees, with a pending inspection for tree removal for which the landlord will be billed.

The landlord reiterated that their evidence clearly shows a stove or "canister" as proof of burning on the property. Moreover, the images show logs cut, with no contradictory evidence to show the trees came down for any other reason. Further, the images show a "gravel pit foundation" which the landlord demanded not be placed there, and the demand to the tenant that it gets removed.

Additionally, the landlord provided an excerpt of text messages they had with the tenant on May 2, 2020. This refers to an application, driven by the tenant, to have the property as a "farm status", and the tenant's request to expand farmland "so it's more looking like a hobby farm than just the forest." The tenant described "nothing major" in order to accomplish this: "except clearing some shrubs and trees" with "some trees are causing some hazard." They state: "we need your permission." To this, the landlord replied: "We do not want to overturn other areas for other farming."

The landlord provided a comprehensive response document entitled "Landlord's Comments", undated. This sets out the chief points on reasons for issuing the One-Month Notice:

- late rent: the landlord “discovered that the tenants were delaying the rent even though they had money” and during this dispute “they appear to be withholding it intentionally.”
- damage to property: cut down 10 trees and excavated large amounts of soil to make their leisure garden beds. The municipality gave the landlord “an estimate of a $10,000 fine for the tenants’ cutting trees”. The tenant built a large fire pit, and burned branches, leaving it unattended. There were five verbal demands and a written demand more recently. (A separate set of photos numbers each of the 10 trees identified.)
- risk/threats to property: Cutting trees and dangerous fires, where “they show no remorse about the destructive nature of their leisure activities, and they will likely continue their activities if the tenancy goes on.” Additionally, there are threats of a lawsuit, a report to the “tax authority” and police. The landlord sets out the tenant’s coercion which underlies all communication, turning matters against the landlord.
- Requested repairs are not undertaken due to the tenant not making time available and then arguing the landlord is not giving sufficient notice. The landlord is not able to undertake key septic maintenance before winter due to the threats of calling the police.
- This has taken its’ toll on one of the landlord’s health, for which they are receiving medication.

For the second bullet above regarding tree removal, the landlord provided an email dated October 16, 2020 from a municipality Environmental Co-ordinator who gives a response to an unidentified third party. This asks for an address, and lists fines of “$1000 per tree” with the possibility of $10,000 per tree if they are significant trees.

The landlord also provided a copy of a July 28 document that sets out a request for repairs to the tenant, with specified due dates for each of seven items. Photos illustrate each of the landlord’s requests; these are the details observed by the landlord on their July 27 visit. The photos show: an open fire pit to be covered with soil immediately; felled trees with the request to stop immediately; disturbed soil at the back of the property to be restored; a gravel bed to be removed and restored with grass; and an area of removed bushes next to the house, with the specific instruction not to burn in that space.

In a written response to these requests of the landlord, the tenant replied on August 4. The landlord responded to this in the same document on August 20, in a virtual line-by-line reply to each of the issues raised by the tenant. This piece sets out the dialogue

between the parties concerning a farm classification lease (as a property tax benefit proposal by the tenant) which the parties had arranged in 2019. The parties each set out their version of past communication regarding clearing of the land, which the landlord labels as “careless and reckless alterations to our land.” The tenant reiterates past and present requests for repairs from the landlord and maintains the need for improvements or other work to be done so that the property is “in line with using the property for agricultural purposes.”

The pattern of communication between the parties carried over into text messaging. The landlord submitted printouts of messages between the parties starting from July 28 onwards. These are labeled by the landlord as “threats” following their written request to the tenant to clean up and remediate the damages they caused. By the following day, the tenant asked the landlord to “kindly stop harassing” when the landlord reiterated their request for removal of the fire pit. The tenant also referred to a “legal letter” and by early September was referring to a “$20 million character defamation lawsuit.”

By August 14, the tenant messaged the landlord to say: “we are in the process of liquidating the farm cleaning up all sites to return the property to previous condition.”

In the hearing, the tenant responded to the landlord’s submissions by stating there were prolonged discussions, prior to the summer of 2020, on changing the land or modifying some purposes or uses, in order to apply for a municipality farm classification. This was not, in the tenant’s submission, an attempt to prune trees. With reference to specific-labeled photos of the landlord showing tree cutting numbered 1 through 10, the tenant gave specific responses: they either fell after a windstorm and were cut for a path only; are actually logs, or trees that fell closer to the house. Any other photos depicting cut branches show the need to do so for safety, or to clear a pathway, and this “is actually adding value to the property.”

The tenant described other structures as “not permanent” and inline with improving the property to upgrade it to a farm status. They noted especially that these were costs they bore entirely on their own.

The tenant provided more specific details:

- the fire pit shown in the pictures was there prior to their tenancy – after a windstorm they merely fortified it by using surrounding rocks

- there is no smoke shown in the pictures – the tenant had not used the firepit since March
- a photo purportedly showing burning closer to the home is in reality cat litter
- the landlord "barely visited the site in the last two years"
- the messages provided in their evidence show the threats made by the landlord to the tenant from August 2020 onwards.

Analysis

Based on the information submitted by both parties in the follow-up December 2, 2020 hearing, I find the tenancy was *not* established primarily for a business purpose. This means I have jurisdiction under the *Act* to make the decision in this residential tenancy matter. The tenant described their activities on the property as that establishing a "hobby farm."

Section 47 of the *Act* states, in part:

> (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (b) the tenant is repeatedly late paying rent;
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (iii) put the landlord's property at significant risk;
>
> (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to these reasons in their oral testimony and provided documentary evidence; however, I find there is insufficient evidence to show the One-Month Notice is valid. The evidence presented does not substantiate the grounds indicated on page 2 of the document.

The landlord did not provide evidence that shows they addressed repeated late payments of rent in a direct manner with the tenants prior to issuance of the One-Month Notice. The One-Month Notice page 3 does not contain any details on this reason for ending the tenancy. The landlord stated in their "Comments" document that "At times, the tenants asked the landlords to allow them extra time to pay rent." Late payments were not without the landlord's knowledge in any event. I find this shows the tenant was open and candid in a request for late payment, with no other evidence to show the

landlord refused these requests. As such, I find there is no evidence to validate their issuance of the One-Month Notice for this reason.

On other reasons, I find there were alterations to the land. Whether these are accurately described or identified as ‘extraordinary damage’ or a ‘significant risk’ is the key consideration in my determination of whether the One-Month Notice is valid.

I find the landlord has not established that there is significant risk to the property, in relation to the use of the fire pit. While the evidence does establish that there is a fire pit present, the landlord does not establish that it was used in a careless or wanton fashion. The landlord posed that there was extant smoke emerging when they photographed it and captured a brief video; however, a higher threshold of proof is needed to establish that outright unsupervised burning was a fact. I find a very brief video does not establish the significant risk present to cause damage to the property.

Further, the evidence does not show the location of the fire pit in relation to the house. With this consideration, I find the tenant did establish that a clear boundary is present on the fire pit location, and on a balance of probabilities I find this demonstrates due care and attention by the tenant on the use of such a fire pit.

With further reference to photos, I find the photo of the oven-like apparatus does not show a lack of fire control. I find the landlord is speculating that lit ash is emerging from the apparatus; this is not proven in the evidence. Similarly, I find the photos do not show “fires in the wild bushes near the house” – there is no clear evidence of this, and the images captured do not establish such burning as fact.

Additionally, the landlord did not show that use of a fire pit in this manner is in violation of any bylaws, and there is no record they felt obligated to inform fire authorities. There is thus no evidence to show this activity is prohibited. For these reasons, I find the landlord has not provided adequate evidence and they have not met the onus to show significant risk to their property as a result of the actions of the tenant.

In their written statement the landlord described the risk “to the landlords’ rights and health”. They did not make this indication on page 2 of the One-Month Notice served to the tenant. As such, the impact of the tenant’s actions on the landlords’ health or well-being is not verified in the evidence, and there is no indication this formed the basis for the landlord issuing the One-Month Notice.

The other detail provided on page 3 of the One-Month Notice concerns “reckless logging, digging, building.” This matches to the landlord’s indication on page 1 that “the tenant has caused extraordinary damage”.

I find the landlord’s evidence does not show extraordinary damage. There are alterations to the land in the form of a gravel pit; however, this is not irrecoverable damage. I find that a gravel pit of this nature – even without its purpose being established – is relatively easy to remove and a return to a prior state is not too great of an undertaking. I find this does not constitute “damage”.

Similarly, I find the tenant credible in their account of what happened in specific pictures of tree damage on the property. This is not irreparable damage or permanent in nature. There is no record of an actual fine imposed by the municipality for tree removal and from the evidence presented I am not satisfied that what is shown in the photographs even merits the attention of the municipality.

There is also no record of explicit instruction at the start of the tenancy that trees are not to be harmed. In the May 2 dialogue, there is no language from the landlord that constitutes clear instruction to not deal with any trees.

I find these are not significant trees. The landlord has not shown how the precise location of each tree adds value, or any sentimental reason for keeping them in place. This is not a matter of the tenant clear-cutting significant portions of the land, and along with images showing land coverage with abundant foliage, I cannot establish how these trees coming down (not entirely proven to be the actions of the tenant) constitutes extraordinary damage.

In the “Landlord’s Comments” document submitted by the landlord and detailed above, the landlord stated they issued the One-Month Notice for damage and significant danger posed by the tenant’s actions. I have addressed these matters above. They also added that they were seeking termination because “[the landlord] cannot continue tenancy under the tenant’s aggression, harassment, and threats following the landlords’ written demand for damage remediation and the termination notice.” I find the latter part of what the landlord describes here is more likely than not the primary reason for issuance of the One-Month Notice. Unfortunately, communication between the parties soured when the landlord made their requests to the tenant; however, this does not constitute a valid reason to end the tenancy and was not identified as such on the One-Month Notice.

For the reasons above, I order the One Month Notice to be cancelled.

As the tenant was successful in the Application they filed on October 19, 2020, I find the tenant is entitled to recover the $100 filing fee paid. For this, I authorize the tenant to withhold the amount of $100 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on October 17, 2020 is cancelled and the tenancy remains in full force and effect.

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 30, 2020

Residential Tenancy Branch