Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, CNL, FFT, MNDCT, RR

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order for the landlords to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application and amendments. In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application and amendments. As all parties confirmed receipt of each other's

evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

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As the tenants confirmed receipt of the 2 Month Notice dated June 18, 2021, I find that this document was duly served on the tenants in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlords to provide services or facilities required by law?

Are the tenants entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to monetary compensation for loss, or other money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

On April 22, 2019, both parties entered into a month-to-month tenancy agreement, with monthly rent set at $1,500.00, payable on the first of the month. The landlords collected a security and pet damage deposit in the amount of $750.00 each deposit.

On June 18, 2021, the landlords served the tenants with a 2 Month Notice to End Tenancy for Landlords' Use, with an effective move-out date of August 31, 2021, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenants are disputing the good faith of the landlords in issuing the 2 Month Notice as they feel that the landlords' true motive for ending this tenancy is due to the multiple disputes that have arisen during this tenancy between the parties. The tenants testified that a disagreement arose over the tenants' attempt to use a dog walker, after which the landlords had restricted their internet access. The tenants testified that there were also disputes over other issues such as the tenants' right to use a parking spot on the property.

The tenants testified that the landlords had removed their right to use a parking spot on the property, and were told to park on the street instead, despite the fact that the tenancy agreement sets out that one parking spot is included in the monthly rent. The tenants submitted a copy of an email sent to the landlords on June 18, 2021 at 1:13 p.m. about the connection issues related to the internet, and a request for an associated rent reduction. The email also references the landlords' request for the tenants to park on the street, and included a request for a rent reduction in relation to the parking. The tenants were served the 2 Month Notice later that same day.

The tenants filed the application as they feel that the landlords had served them the 2 Month Notice in retaliation, and the tenants further requested an order for the landlords to comply with the *Act* and provide the services and facilities agreed upon.

The tenants also made the following monetary claims as set out in their monetary order worksheet:

Item	**Amount**
Moving Expenses	$2,000.00
Monetary compensation for the "alleged bad faith" back pay	10,500.00
For disruption of parking and internet	1,200.00
Total Monetary Order Requested	**$13,700.00**

The landlords responded that they had actually started to consider the decision to end the tenancy in order to use the suite for their own use after a 911 call on May 29, 2020, and that this decision was further necessitated by the landlords' concern for the mental health of their children. The landlords called a witness in the hearing, HS, who was

present during the incident on May 29, 2020. The landlords and witness noted that the alarm had gone on and off, and that they had later discovered that the battery had been removed. The landlords testified that the incident made them reflect on the safety and welfare of the children, especially when they were not home.

The landlords testified that the mental health of their children has declined, and the landlords required more room in order for their friends to come over. The landlords submitted photos of unused exercise equipment that they had no space for. The landlords deny that the 2 Month Notice was served in retaliation, and state in their written evidence that it was merely a coincidence that the 2 Month Notice was served that same date. The landlords testified that the 2 Month Notice was prepared prior to the receipt of that email, and that the service was done that evening at 7:00 p.m., as set out in the timeline provided.

The landlords dispute the tenants' claims of harassment, and the removal of services and facilities. The landlords testified that the parking spot was provided as a courtesy, but that due to the location of the parking spot, the landlords requested that the tenants park on the street as it inhibits the landlords' ability to access and use their garage. The landlords testified that although the tenants have requested compensation, the tenants continue to park there, and have not suffered any losses associated with the landlords' request as street parking is plentiful.

The landlords also dispute that the 2 Month Notice is related to the disagreement over the dog walker, and that their concerns were justified as they did not want unauthorized access to their home to strangers. The landlords also dispute that they have changed the internet access in a way that has reduced or removed the tenants' access to the internet. The landlords testified that they have in fact upgraded the modem, and that the tenants have and continue to access the connection. The landlords testified that they have tried their best to accommodate the tenants, but the tenants continue to make requests for rent reductions. The landlords feel that the monetary orders requested in this application are not sufficiently supported.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlords testified that they wished to retain the suite for their own use.

The tenants disputed the 2 Month Notice, and believe that the 2 Month Notice was served to them due to the various grievances expressed by the tenants.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

> *"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*
>
> *If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

Although the landlords had stated that they had issued the 2 Month Notice as they required the space for their own use, I find that the tenants have raised doubt as to the true intent of the landlords in issuing this notice, especially in light of the fact that the tenants had attempted to address various grievances prior to the issuance of the 2 Month Notice.

Although the landlords did provide a specific explanation for why they had served the 2 Month Notice on the tenants, I am not satisfied that this is the main reason for ending this tenancy. I find that the testimony of both parties during the hearing and in the evidentiary materials, raised questions about the landlords' good faith. Despite the explanations provided by the landlords, I find that there are many reasons why I do not believe the landlords' testimony that the circumstances were merely circumstantial. As stated above, the burden of proof is on the landlords to demonstrate that they do not have any ulterior motives for ending the tenancy.

I find that the evidence is clear that the landlords are unhappy with the tenants, and their grievances and requests. I find that several of the issues described remain unresolved, such as the dispute over whether the tenants have the right to park on the property. Based on a balance of probabilities, and for the reasons outlined above, I find

that the landlords have not met their onus to show that they truly required the space for their own use, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice dated June 18, 2021 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenants also filed an application for the landlords to provide services and facilities as set out in the tenancy agreement, and for the landlords to comply with the *Act*. The tenants also requested a rent reduction in relation to the withholding of these facilities. In consideration of the tenants' grievances about the internet, I am not convinced that the landlords have removed or changed this service to the disadvantage of the tenants. Accordingly, I dismiss all claims in relation to the internet service.

In relation to the parking, I find that the tenancy agreement clearly states that one parking spot is included in the monthly rent. Although the landlords testified that street parking is plentiful, and that they had only provided the space on the property as a courtesy, I do not find that it makes sense to note the inclusion of this facility on the tenancy agreement if the landlords had meant street parking, as street parking is not a service or facility that is provided by the landlords in exchange for monthly rent. I also find that there are no notations of the temporary or conditional nature of the included facility. Furthermore, I find it undisputed that during this tenancy, the landlords had previously provided the tenants with the right to park on the property, even if the landlords had felt that this was a "courtesy". The *Act s*tates the following about the termination or restricting of services or facilities:

Section 27 Terminating or restricting services or facilities, states as follows,

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that parking would be considered a qualifying **service or facility** as stipulated in the **Definitions** of the *Act*.

I find the evidence is undisputed that the landlords had requested that the tenants park on the street instead. Although the landlords provided an explanation for this request, I find it clear that the landlords have attempted to remove a facility that was originally included.

In considering whether the tenants are entitled to the monetary order for a reduction in rent, I must determine whether there has been a reduction in the value of the tenancy agreement. Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this matter the tenants bear the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenants' application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be "equivalent" to *the reduction in the value of the tenancy agreement.* I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, "what is the reduction in the *value* of the tenancy agreement resulting from the absence of the facility"? Or, "by what amount is the *value* of the tenancy agreement (rent) reduced in absence of facility"?

I have considered the *Act* definitions of**, "rent", "service or facility",** and **"tenancy agreement"**, all of which I find comprises the totality of the tenancy agreement. I note that despite the landlords' requests for the tenants to park on the street, the landlords have provided evidence to support that the tenants continue to park on the property on occasion. Furthermore, despite the fact that the tenants have been inconvenienced by the removal of this facility, I find that the tenants have failed to establish the loss or reduction in the value of the tenancy agreement in their application. In light of these two things, I feel that a rent reduction is not justified at this time as I do not feel that the tenants have not sufficiently supported that they have suffered a loss, nor have they established the value of this loss. Accordingly, I dismiss the tenants' application for a rent reduction with leave to reapply.

In relation to the tenants' right to park on the property, I find that in accordance with the tenancy agreement, the tenants are entitled to one parking spot on the property. If the landlords are no longer able to provide this facility, I order that the landlords comply with section 27 of the *Act* in providing proper notice and compensation to the tenants. As noted above, the tenants have leave to reapply if this dispute cannot be resolved.

The tenants also applied for further monetary compensation under the *Act*.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the tenants has failed to provide sufficient evidence to support the value of any of the other losses applied for, and how they are directly and solely due to the landlords' failure to comply with the *Act,* tenancy agreement, or any Orders of an Arbitrator. On this basis, I dismiss the remaining portion of the tenants' application without leave to reapply.

I allow the tenants to recover half of the filing fee for this application as they were partially successful in their application.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlords' 2 Month Notice, dated June 18, 2021, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of $50.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of $50.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the tenants' applications in relation to the parking with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

The remainder of the tenants' application is dismissed without leave to reapply.

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: October 21, 2021

Residential Tenancy Branch