



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, DRI

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act) on August 8, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice);
- An order for the Landlord to comply with the Act, regulations, and/or the tenancy agreement; and
- To dispute a rent increase.

The hearing was convened by telephone conference call at 9:30 AM on September 29, 2022, and was originally attended by the Tenant L.F., the Tenant's lawyer R.L., and the Tenant's advocate J.M.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and the Notice of Hearing. As neither the Landlord nor an agent for the Landlord initially attended the hearing, I started to confirm service of these documents, however the Landlord G.S. and the Landlord's agent/building manager E.M attended at 9:43 AM. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and the documentary evidence before me from the Tenant, and raised no concerns with regards to service date or method, the hearing therefore proceeded as scheduled and the documentary evidence of the Tenant was accepted for consideration. No documentary evidence was submitted by the Landlord for my consideration. The parties were provided an opportunity to present their evidence and testimony for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

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

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them and their lawyer at the email addresses confirmed at the hearing. At the request of the Landlord, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address listed in the Application.

Preliminary Matters

Preliminary Matter #1

The Tenant filed an Application seeking multiple remedies under multiple unrelated sections of the Act. Rule 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.

I find that the priority claims made by the Tenant relate to the end or continuation of the tenancy, and the amount of rent payable. As a result, I exercise my discretion to dismiss the Tenant's claim seeking an order for the Landlord to comply with the Act, regulations, and/or the tenancy agreement with leave to re-apply.

Preliminary Matter #2

The parties were cautioned at the outset of the hearing, and again after the late attendance of the Landlord and their agent at 9:43 A.M., that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were

also advised that I may interrupt them and ask them to move on if the evidence and testimony they were presenting was either irrelevant to the matters I must decide as a result of the Application, or because the evidence and testimony had already been sufficiently provided and recorded. Despite these cautions, the Landlord was repeatedly asked throughout the hearing to either move on from irrelevant or repetitious testimony/issues, or to refrain from speaking. During conclusory statements, the Landlord's behavior became unacceptable. Although I cautioned the Landlord several times that if their behavior continued, I would have to mute them or remove them from the teleconference, they continued to shout, interrupt, discuss irrelevant topics, and use profane language. As a result, I muted the Landlord.

As the Landlord and their agent had called in from the same phone number, I advised the hearing participants, all of whom could hear me even when muted, that the Landlord's Agent was permitted to call into the hearing from another line, if they wished to do so, and provided the teleconference phone number and access code. I advised the parties that I would wait several minutes before proceeding to allow them an opportunity to call in, should they wish to do so, and provide conclusory statements on the Landlord's behalf. When no one called in on behalf of the Landlord, the hearing proceeded briefly while I wrapped up the hearing and provided general information to the parties about what to expect next. At the very end of the hearing, I un-muted the Landlord to ascertain how they wished to receive a copy of the decision. At that time, I also allowed the the Landlord and their Agent to provide brief conclusory statements, as the Landlord's behavior had improved.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Was rent improperly increased?

Background and Evidence

Although the parties agreed that a written tenancy agreement exists, a copy of the tenancy agreement was not provided. However, the parties agreed that the tenancy began in April of 2012, approximately 10 years ago, and that rent at the start of the tenancy was \$795.00 per month, not including utilities.

The one month notice in the documentary evidence before me is signed and dated July 31, 2022, has an effective date of August 31, 2022, and states that the tenancy is being ended because the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit or property. Although details were provided in the details of cause section of the form, much of the details provided do not relate to the ground selected on the One Month Notice as the reason for ending the tenancy. I advised the parties that as only one ground was selected on the One Month Notice as the reason for ending the tenancy, I would only consider evidence and testimony relating to that ground in terms of a basis for ending the tenancy with the One Month Notice.

Although the parties were agreed that the Tenant pruned part of a vine growing onto the deck of their rental unit without express consent from the Landlord, they disagreed about whether this pruning constituted extraordinary damage and therefore whether it constituted grounds to end the tenancy. The Tenant and their lawyer argued that the Landlord bears the burden of proof with regards to validity of the One Month Notice, and that not only has the Landlord submitted no documentary or other evidence to establish that the vine was damaged as a result of the Tenant's pruning, they have also submitted no documentary or other evidence to suggest let alone prove that the vine was damaged in any extraordinary way that would give the Landlord the right to end the tenancy under section 47 of the Act. The Tenant stated that they have been pruning the vine themselves in this very same way for the last six to seven years without any issue and both the Tenant and their lawyer pointed to photographs in the documentary evidence before me which they state show not only that the vine is undamaged but that it is thriving and continuing to regrow onto the Tenant's balcony.

The Landlord disagreed, stating that the vine was pruned so improperly that it was falling. The Landlord stated that they have a gardener come once a week and therefore there was no reason for the Tenant to have cut the vine on their own. The Landlord was concerned that the vine was cut late at night by someone unknown to themselves, and that the driveway, trees and flower bed were littered with clippings from the vine. As a result, the Landlord stated that they contacted the police and issued the One Month Notice.

The Tenant responded by saying that the person who cut the vine was not a stranger but their adult son who could only attend their residence in the evening after work. They also acknowledged being contacted by the police but stated that no charges were laid.

The parties were agreed that rent was increased to \$895.00 effective February 1, 2022, and that the Tenant has paid the increased rent since that time. However, the parties disagreed about whether the Landlord was allowed to increase the rent in this manner and by this amount. The Tenant stated that although they were not morally opposed to a rent increase, they objected to the way in which it was handled as the Landlord did not comply with the requirements of the Act. The Tenant stated that they also would not likely have disputed the rent increase if the Landlord had not served them with the One Month Notice which they find to be both frivolous and vindictive in nature.

Although the Landlord acknowledged that no notice of rent increase was served on the Tenant in the approved form, they stated that they nonetheless feel that the rent increase is valid as the Tenant went 10 years without a rent increase, and therefore they determined that a \$100.00 rent increase was reasonable.

Analysis

Section 47(1)(f) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property.

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 when a tenant disputes a notice to end tenancy, the landlord must prove the reason they wish to end the tenancy. Although the Landlord argued that pruning the vine constitutes extraordinary damage, the Tenant and their lawyer disagreed, and the Landlord submitted no documentary or other evidence to establish that the Tenant's pruning of the vine caused damage to the plant, let alone that any damage caused by the pruning rose to the very high bar of extraordinary damage. Further to this, I find that the photographs submitted by the Tenant establish it to my satisfaction on the balance of probabilities that the vine is continuing to grow and is therefore not damaged in any extraordinary way.

Based on the above, I therefore find that the Landlord has failed to satisfy me on a balance of probabilities that they have grounds under section 47 of the Act to end the tenancy due to extraordinary damage. I therefore grant the Tenant's Application seeking

cancellation of the One Month Notice and order that it is cancelled and of no force or effect. Having made this finding, I will now turn to the matter of the rent increase.

Section 41 of the Act states that a landlord must not increase rent except in accordance with this part. Section 42(1) of the Act states a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Sections 41(2) and 41(3) of the Act also states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that a notice of a rent increase must be in the approved form. Section 43 of the Act sets limits on the amount of a rent increase.

Based on the testimony of the parties before me for consideration, I am satisfied that the Landlord increased rent in February of 2022 contrary to the Act as they failed to serve the Tenant with a notice of rent increase in the approved form, as required. I am also satisfied that the amount of the rent increase, \$100.00, exceeded the allowable rent increase amount for 2022, which was 1.5 %, or \$11.92 (based on \$795.00 in rent). As a result, I find that rent remains at \$795.00 per month as set out in the tenancy agreement and that the Tenant has overpaid rent by \$100.00 per month starting in February of 2022. As of the date of the hearing, I find that the Tenant is owed \$800.00 in over paid rent. If the Tenant also paid \$895.00 in rent for October 2022, I find that the Tenant is also owed an additional \$100.00 for this rent overpayment.

Based on the above and pursuant to section 72(2)(a) of the Act, I grant the Tenant authority to withhold \$800.00 in rent for recovery of the filing fee and rent overpayments between February – September 2022. If the Tenant paid \$895.00 in rent for October 2022, I also authorize the Tenant to withhold an additional \$100.00 from rent due to this overpayment.

Conclusion

I grant the Tenant's Application seeking cancellation of the One Month Notice and order that it is cancelled and of no force or effect.

I grant the Tenant authority to withhold \$800.00 in rent for recovery of the filing fee and rent overpayments between February – September 2022. If the Tenant paid \$895.00 in rent for October 2022, I also authorize them to withhold an additional \$100.00 from rent.

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 4, 2022

Residential Tenancy Branch