



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, DRI, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord, to dispute a rent increase that is above the amount allowed by law, and to recover the cost of the filing fee.

The tenants, the tenant's agent (agent), and the landlords attended the hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenants' evidence shows the landlords were served their application and attached evidence by registered mail, and they said the mail was collected. The tenants confirmed receipt of the landlords' evidence.

I have reviewed all oral, written, and other 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 in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issues and Procedural Matters –

Rule 2.3 requires that claims made in the application be related to each other and further, that I may dismiss unrelated claims with or without leave to reapply. I find the additional claim of disputing a rent increase is unrelated to the primary issue of disputing the 1 Month Notice. I therefore **dismiss** the tenants' dispute of an additional rent increase, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Additionally, despite being cautioned multiple times against interruptions during the hearing, the landlord, SSB, continued to interrupt throughout the explanation of the hearing process and discussions of preliminary issues. These cautions included informing the landlord of my ability to mute the landlord. As the landlord continued to interrupt, I placed the landlord on mute to continue explaining the hearing process and discussions. This meant the landlord could continue to listen to the hearing, but his portion of the hearing was muted.

The landlord was returned fully to the hearing when it was time for the landlord to provide their evidence in support of the 1 Month Notice. The landlord was not muted further from that point.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the 1 Month Notice?

Should the Notice be cancelled or enforced?

Background and Evidence

The written tenancy agreement shows a tenancy start date of December 15, 2015, for a monthly rent of \$2,500. Filed in evidence was the written tenancy agreement.

Current monthly rent is \$3,400, which was increased by \$700 when the tenants took over the additional basement portion of the residential property in 2016 as part of their tenancy. The rental unit comprises the entire home, consisting of 6 bedrooms, 4 full bathrooms and 2 ½ stories.

Filed in evidence was the Notice. The Notice was dated February 8, 2023, for an effective move-out date of March 15, 2023. The tenants confirmed receipt of the Notice on February 10, 2023 by registered mail.

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The reasons listed on the Notice to end tenancy were:

- Tenant has allowed an unreasonable number of occupants in the rental unit.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

In support of the Notice, the landlord SSB testified to the following. Originally when the tenancy began there were only 6 occupants in the home and now there were at least 14 occupants, which included international students and additional children of the tenants. The tenants have so many boxes in the rental unit, they were obviously running a business from the home. The city bylaw allowed only up to 12 people in a home. Their insurance company will not insure the home due to the amount of people living there. The tenants are subletting the rental units. The tenant's sister is now also living in the rental unit.

In a written statement, the landlord wrote the following:

The totality of these examples prove, we believe, that there are at least twelve people residing at our rental property which is our grounds for serving the "One Month to End Tenancy for Cause" notice to our tenants Mr. [] and Ms. [].

In regards to the tenant's dispute involving rent increase it should be noted Mr. [] and Ms. [] have been paying far below market rent. Additionally with our evidence of twelve people living in the house along with the tenant's own admission three international students reside with them, it is reasonable to assume the tenants may be running a boarding room type of business. []

[Reproduced as written except for anonymizing personal information to protect privacy]

When questioned, the landlord did not explain how the tenants may be subletting the rental unit.

Tenants' response

In response to the Notice, the agent testified to the following: The tenants are not subletting the residential property as they live there. When the tenancy began, the tenants, their 3 children and their mother lived in the upper portion of the home and the basement level was being rented to another tenant. Since that time, the tenants had 3 more children, twins in 2018 and another in 2019, and their mother moved back home to another country. When the basement tenant was evicted in 2016, the landlord offered them the basement as part of their tenancy for an additional \$700. The landlord suggested to the tenants that they take in international students, just as other tenants in the past had done. Since the tenants took over the basement, they have anywhere from 0-3 international students, since 2017. Some students' length of stay is only for a couple of months.

The younger children share bedrooms. The tenant's sister does not live in the residential property, but does come over some to help with childcare. The landlord has known all along that the tenants have had international students. In addition, the reason the landlord served the 1 Month Notice was due to the tenants not agreeing to a rent increase to \$4,000 per month, from the \$3,400 they are currently paying.

Part of the tenant's written statement is reproduced as follows:

- In November or December 2022, the Landlords were in the house addressing a new water heater. [] said "I think we need to do a rent increase, because the market rent is getting high".
- On January 15, 2023, they again said we should talk about the rent increase. The Landlords suggested the rent should go up from \$3,400 to \$4,000, a 17.6% increase. Landlord said they would end tenancy if we didn't pay higher rent. [] said that the increase should be to \$5,500, a \$2,100 increase, but that he was giving us a deal by only increasing it to \$4,000. [] also was asking about our family's income and salary and was saying this is also the reason the rent must be increased.
- On February 2, 2023 at 10:56 AM, [] sent a text message that said "Hi [], so what did you decide about the rent?"
On February 3, 2023 at 9:48 AM, [] sent a text message that said "I sent you a message yesterday and you didn't answer"

- On February 3, 2023 at 9:57 AM, I replied "Hi [redacted] and [redacted], we are still figuring it out about your request of \$600 rent increase. Anyway, we will talk on Feb 15, 2023. Thank you."
- On February 3, 2023 at 11:59 AM, [redacted] sent a text message saying "If you can not afford we can rent basement alone this is very reasonable rent. New rent is Feb the 15"
- On February 7, 2023 at 11:35 AM, I sent [redacted] a text message saying:

"Good morning [redacted] with due respect to your rent increase of \$600, you cannot take the basement suite from us because we are renting the whole house and we never missed rent payments. Besides, as you know, the basement is not a legal suite. You know that by law the rent increase of \$600 is illegal. By law you can only increase the rent not more than 2%. Besides you already increase the rent last year by \$200 making my whole rent to \$3,400 now which we never failed to pay you on time for the past 7 years. Just to let you know this unreasonable increase of yours has brought us a lot of stress because you told us that if we cannot afford to give you the \$600 rent increase by February 15 2023 we have to move out."
- Also on February 7, at about 3 PM, I asked my friend and neighbour [redacted] for help. [redacted] called and spoke with [redacted]. They told him the market rent for that house is \$5,000 and that they cannot afford the mortgage payments because the payments have gone up. They said if we didn't accept the rent increase, they would move their son in to the unit and evict us. [redacted] suggested dispute resolution. They told [redacted] that the arbitrator would agree that it is fair to increase the rent to market rent instead of evicting them. When [redacted] said the maximum rent increase was \$68, not \$600, they ended the call and told him they were going to evict us.
- The next day, February 8, 2023, [redacted] called me several times. They said they were going to evict us because they were upset that [redacted] called them.
- On February 10, 2023, we received a Notice to End Tenancy For Cause. It had been sent by registered mail and was postmarked February 8th.
- When we moved in December 2015, [redacted] suggested we could afford the rent if we have international students live with us. The previous renter, [redacted], had done similar, and was involved in this conversation. [redacted] had referred us to [redacted]. [redacted] verbally confirmed that this was OK, "as long as you pay on time".

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The tenants filed text messages between the landlord and tenant relating to the landlord's request for an increase in the monthly rent to \$4,000 and a note received just prior to the hearing, from the landlord to the tenant, about what the monthly rent could be if they had increased the rent during the tenancy.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Rule 7.17 states the arbitrator has the authority to determine the relevance, necessity, and appropriateness of evidence.

In addressing the landlords' claim that the tenants have sublet the rental unit, I find the landlord submitted insufficient evidence to support this claim. Under the Act, subletting means that a tenant enters into a tenancy agreement with sub-tenants, but retain their tenancy agreement with the landlord. The tenants would have to have moved out to allow the sub-tenants to live in the property. The tenants still reside in the property, so there is no sub-tenancy. I find the landlord submitted insufficient evidence that the tenants have sublet the rental unit.

As to the second cause on the 1 Month Notice, I have considered the actions of the landlords. I accept the tenants' evidence that they have had international students stay in the rental unit since 2017 and I find that the landlords knew and even suggested that international students stay there. I find this as the evidence was undisputed by the landlord, despite being given the opportunity to provide rebuttal statements.

This leads me to conclude that the landlord has not had an issue with the international students staying in the rental unit and further, that the landlord has known of the additional children since 2019, when the last child was born and has done nothing to end the tenancy based upon an allegation of unreasonable number of occupants. This is in effect a waiver of any rights of enforcement under the Act. For this reason, I find the landlords did not consider there were an unreasonable number of occupants in the rental unit and their 1 Month Notice fails on this basis.

I find the tenants submitted sufficient evidence to show that the motivating factor in the landlords issuing the 1 Month Notice was due to the tenants' refusal of a rent increase far above the allowed amount. Directly after the tenants' refusal of the \$600 per month increase, the landlord served the 1 Month Notice. This is supported by the tenants' documentary evidence, which includes text messages from the landlord and the timing of the 1 Month Notice after the rejection of the \$600 rent increase.

As a result of the above, I find the landlords have submitted insufficient evidence to support either cause listed on the 1 Month Notice dated February 8, 2023.

Therefore, I grant the tenants' application and **order** the 1 Month Notice dated February 8, 2023, is cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

As the tenant's application had merit, I grant the tenants the recovery of the \$100 filing fee. I authorize the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Information for the landlords

During the hearing, the tenants spoke about the landlords coming into the rental unit many times unannounced. I remind the landlords of section 29 of the Act. A landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

Conclusion

The 1 Month Notice is cancelled and of no force or effect.

The tenants have been granted recovery of the filing fee of \$100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 05, 2023

Residential Tenancy Branch