Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT / OPC, FFL

Introduction

The reconvened hearing took place following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants seek the following:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47 of the Act;
- An order for the Landlords to comply with the Act, the *Residential Tenancy Regulation* or tenancy agreement under to section 62 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlords seek the following:

- An Order of Possession based on the Notice under section 55 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act

The first hearing was adjourned due to the original Arbitrator assigned to hear the matter being away sick on the day of the hearing and the second Arbitrator assigned did not have adequate time to review the evidence of both parties at short notice. This Decision should be read in conjunction with the Interim Decision dated August 24, 2023. Both Tenants and all four Landlords attended both hearings.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these Materials as required under sections 88 and 89 of the Act.

Preliminary Issue: Severing

The Tenants applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

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.

After reviewing the issues raised by the Tenants, I determined that the primary issue is the Tenants' request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Notice?
2. If not, are the Landlords entitled to an Order of Possession?
3. Are either party entitled to recover the cost of the filing fee for their respective Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The Tenants commenced occupation of the rental unit on August 15, 2014 under a previous tenancy agreement.
- A second tenancy agreement was signed by the parties, commencing on July 1, 2017 for a fixed-term ending July 1, 2018 and continuing on a month-to-month basis thereafter.
- Rent is currently $2,228.49 per month, due on the first day of the month.
- A security deposit of $1,050.00 and a pet damage deposit of $1,050.00 were paid by the Tenants which the Landlords still hold.
- There is a written tenancy agreement, which was entered into evidence.
- The Tenants still occupy the rental unit.

A copy of the Notice was entered into evidence. The Notice is signed and dated March 28, 2023 and provides an effective date of April 30, 2023. The reason for ending the tenancy, per the Notice is:

- "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlords testified as follows. The Tenants have engaged in unauthorized food propagation and there is a concern over the overall lack of care for the rental unit on the part of the Tenants. Following an inspection of the rental unit by an insurance agent, numerous issues were discovered and the relationship between the Landlords and the Tenants has become strained.

The Notice was issued after the Landlords discovered broken items were not reported and other issues not corrected, such as a fault with the valve on the hot water tank. When one of the Landlords' brothers was carrying out electrical work, they noticed the pressure valve was not working. The Tenants had been manually opening the valve to release pressure. If the valve blows, there will be a flood and the valve will be released, potentially causing damage. The valve was fixed on February 17, 2023.

On October 8, 2022, an insurance company agent noted glass in the oven door was broken. The Tenants initially blamed the damage on wear and tear, but subsequently fixed the door.

The Tenants added green houses to the garden and had around 50 pepper and tomato plants which were placed directly on the decking and leaked water. The decking had recently been replaced and the Landlords' insurer had concerns about the weight of the plants. At the start of the tenancy, the Landlords had said the Tenants could have a few plants provided they were raised up.

Raised growing beds and composters had been added to garden and the Tenants are storing items under a tarpaulin in the garden. The Landlords asked the Tenants to remove these items in September 2022. Some of the beds have been removed, but not all of them. The Tenants said they would do it in their own time. The Landlords were concerned about the composters attracting raccoons and the tenant in the suite below the rental unit reported their dog had been bitten by a raccoon. I was referred to a letter sent to the Tenants on February 14, 2023 notifying the Tenants of the issues and asking for them to be resolved.

The Tenants testified as follows. The plants were moved from the deck onto the grass in December 2022. The previous decking had rotten due to a leak from the roof.

There were two raised growing beds in the garden from the start of the tenancy in 2014 and they added four more in May 2021 and another in May 2022. The five extra beds were added without permission of the Landlords and have now been removed. The two beds that were there from the start of the tenancy remain as the Landlords gave permission for them and raised no issues with them for the first 8 years of the tenancy.

They have complied with the Landlords' requests and removed everything else, apart from the two raised beds present from 2014.

They received no written notice about anything to do with the water tank. They notified the insurance agent of the crack in the interior of the oven door and fixed it themselves.

Analysis

Are the Tenants entitled to an order cancelling the Notice? If not, are the Landlords entitled to an Order of Possession?

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) of the Act provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

There is one reason provided on the Notice which is echoed in section 47(1)(h) of the Act, specifically that the Tenants have failed to comply with a material term of the tenancy agreement and this breach has not been corrected within a reasonable time after the Landlords gave written notice to do so.

A material term is one so important that the most trivial breach of that term gives the other party the right to end the agreement, as confirmed in *Policy Guideline 8 - Unconscionable and Material Terms*. The Guideline also confirms that it is for the person relying on the term to present evidence and arguments supporting the

proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

Furthermore, *Policy Guideline 8 - Unconscionable and Material Terms* provides that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Having considered the evidence before me and the testimony of both parties, I find the Landlords issued written notice to the Tenants in December 2022 via email requesting the garden beds close to the house be moved away before spring and the composters be removed. The Landlords also suggested repairing the oven door and refrigerator handle.

I find further notice was given to the Tenants in writing on February 14, 2023 which was received February 22, 2023. In this written notice I find the Landlords referred the Tenants to “material terms” in the tenancy agreement that require attention which were:

- No fixtures will be removed or added without the Landlords’ consent.
- The tenant is responsible for removing all household garbage and yard waste.
- Any extra storage of items on the property must be with prior written consent of the landlord.

The Details of Cause section of the Notice provides extensive reference to broken items not being reported to the Landlords, and removal of fixtures, specifically the garden beds. As I find there was no written notice regarding the broken items being a breach of a material term prior to the Notice being issued, I find the Landlords are not entitled to end the tenancy on this basis. Aside from this, it was undisputed the items had been fixed at the Tenants’ expense.

The Tenants testified the compost, stored items and all but two of the raised growing beds had been removed which was not disputed by the Landlords. Therefore, I find the only potential material breach of a term in the tenancy agreement left unremedied after written notice are the addition of the two raised growing beds.

I find the two growing beds were present in the garden of the rental unit since the start of the tenancy in August 2014 and, on a balance of probabilities, verbal consent was given be the Landlords for them to be added.

Given the duration of the raised bed's presence in the garden and, as I find it more likely than not that verbal permission was given for these at the start of the tenancy, I find their addition is not a breach of a material term of the tenancy agreement, and therefore the Landlords are not entitled to an end of tenancy under section 47(1)(h) of the Act.

Given the above findings, I dismiss without leave to reapply the Landlords' Application and I grant the Tenants' Application. I order the One Month Notice to End Tenancy for Cause dated March 28, 2023 cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

As the Tenants have been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenants may make a one-time deduction of $100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72 of the Act.

As the Landlords have not been successful in their Application, they must bear the cost of the filing fee.

Conclusion

The Tenants' Application is granted. The Landlords' Application is dismissed without leave to reapply. The tenancy continues until ended in accordance with the Act.

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: September 19, 2023

Residential Tenancy Branch