



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes T: CNC, MNRT, MNDCT, RR, PSF, OLC, FFT
 L: OPC, MNDL, FFL

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act;
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- a Monetary Order to reimburse the tenants for the cost of the tenants making emergency repairs to the rental unit during the tenancy;
- an order for reduced rent for repairs, services or facilities agreed upon but not provided;
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act;
- an order that the Landlord comply with the Act, regulations or tenancy agreement; and,
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

This hearing also addressed the Landlord's Application under the Act for:

- an Order of Possession for the rental unit;
- a Monetary Order for damages caused by the tenant to the unit; and,
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

Tenant W.S. attended the hearing with tenant agent/advocate D.B.

Landlord was represented at the hearing by property manager C.R.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord was deemed served the fifth day after the Tenants sent the proceeding package to the Landlord on March 30, 2024, by registered mail in accordance with section 89(1) of the Act. The Tenants confirmed service by submitting a completed Proof of Service form and a copy of the Canada Post delivery confirmation of the package.

The Landlord served its proceeding package to the Tenants in an envelope addressed to both Tenants and sent by Canada Post registered mail on April 22, 2024.

Service of Evidence

The Tenants' advocate stated that copies of the Tenants' evidence was served to the Landlord by registered mail on May 7, 2024. The Landlord confirmed receipt of the Tenant's evidence.

The Landlord served copies of its evidence to the Tenants in the proceeding package sent to the Tenants by registered mail on April 22, 2024. The Tenants' agent confirmed receipt of the package, including copies of the Landlord's evidence.

Preliminary Matters

The Notice of Dispute Resolution Proceeding issued by the RTB to the applicant, under the General Information section, states: "The applicant is required to give the [RTB] proof that this notice and copies of all supporting documents were served to the respondent."

Section 89(1) of the Act provides that an application for dispute resolution, when required to be given by one party to the other party, must be given in one of the following ways:

- a) by leaving a copy with the person;
- b) if the person is a landlord, by leaving a copy with the landlord's agent;
- c) by sending a copy by registered mail to the address at which the person resides, or if a landlord, to the address where the landlord carries on business as a landlord;
- d) if the person is a tenant, by registered mail to the tenant's address;
- e) as ordered by the director; or,
- f) by any other means of service provided in the regulations.

The Regulations in turn, at section 43(2) provides for email service where a person has given an email address to the other party for purposes of service.

Rule of Procedure 3.1 itemizes the documents that an applicant must serve to each respondent within three (3) days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant. These items include the Notice of Dispute Resolution Proceeding issued to the applicant, as well as all copies of all evidence the applicant provided to the RTB, the instructions for the respondent, and any RTB fact sheets that may have been issued.

Rule of Procedure 3.5 states that at the time of the hearing, the applicant must demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding and all evidence required by the Act and the Rules.

In this case, the Landlord had served the Tenants by Canada Post registered mail its application for dispute resolution in a single package addressed to both Tenants. I find the Landlord did not comply with the requirement that each Tenant be served in accordance with section 89 of the Act. Therefore, the Landlord's application for a monetary award for damages is dismissed with leave to re-apply. Insofar as the Landlord's application also requested an order of possession based upon the One Month Notice which the Tenants' have timely applied for dispute resolution, this issue will necessarily be addressed pursuant to section 55 of the Act.

Issues for Decision

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Are the Tenants a monetary order to reimburse the tenants for the cost of the tenants making emergency repairs to the rental unit during the tenancy?

Are the Tenants entitled to an order for reduced rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

Are the Tenants entitled to an order that the Landlord comply with the Act, regulations or tenancy agreement?

Are the Tenants entitled to recover the filing fee for this application from the Landlord under section 72 of the Act?

Background and Evidence

I have reviewed the evidence, and have considered the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence was provided showing that this tenancy began on November 1, 2021, for a six-month term to April 30, 2022, and thereafter to continue on a month-to-month basis. The initial monthly rent was \$1,100.00 due on the first day of the month. The current monthly rent is \$1,138.00 (effective as of November 1, 2023, pursuant to a rent increase). On September 16, 2021, the Tenants provided the Landlord with a security deposit in the amount of \$550.00, which the Landlord continues to hold in trust. A copy of the tenancy agreement was provided in evidence.

On March 20, 2024, the Landlord issued a One Month Notice to End Tenancy for Cause. The effective date of the Notice was April 30, 2024. The grounds for the Notice were that the Tenants posed serious jeopardy to the health, safety or lawful right of other occupants or the landlord; and that the Tenants caused extraordinary damage to the rental unit. The Notice was served to the Tenants by attachment to the rental unit door. The Tenants' application provided they received the Notice on March 20, 2024. A copy of the Notice was submitted in evidence. The Tenants timely applied for dispute resolution on March 25, 2024. The detailed description for the Notice provided by the Landlord stated that Tenants had engaged in conduct or otherwise permitted a cockroach infestation which had spread through the rental unit building.

The Tenants' advocate stated that the Tenants were out-of-town from March 1, 2024, and returned on March 17, 2024. Upon their return, they discovered a cockroaches in their unit. The Tenants then attempted to treat the infestation with bait they purchased at a local store. On March 18, 2024, Tenant K.S. went to the property manager's office to report the cockroaches in the unit and requested that the Landlord provide pest control. On March 19, 2024, pest control sprayed in the rental unit but the problem persisted through the next day. The Tenants' advocate noted that the Landlord's evidence contained a "notice of pesticide use," of chemicals used to treat the cockroach problem, but the document had no notes from the technician. However, on March 20, 2024, the One Month Notice was attached to their rental unit door.

The Tenants' advocate further stated that pest control company also treated the unit on April 3, 2024. The advocate stated the property manager was not in attendance and that she could not attest to the condition of the rental unit. Additionally, the Tenants' advocate took various positions during the hearing as to the source of the cockroaches: initially, he stated it was from a sewer pipe, then later stated that a neighboring rental unit building had recently burned down and it was the source of the cockroaches, and then later stated that the subject rental unit building itself had always had cockroaches.

The Tenants did not provide any specific evidence in support of their contention that the cockroaches migrated from a burned building or from a sewer pipe.

The Landlord's property manager testified that the infestation was directly traceable to the Tenants' unit and the condition in which it was maintained was the cause of the infestation. She stated that pest control has attended to the unit on several occasions since the infestation was reported to her by the Tenants. The property manager testified that other tenants had reported seeing cockroaches come from the Tenants' unit, and that they had spread throughout "half the building." She also stated that the building's cleaning personnel saw the pests coming from under the Tenants' unit door. The pest control technician informed her that the sanitary condition of the Tenants' unit was very poor and that the reports provided by the pest control company noted that the Tenants' unit was the likely source of infestation in the building. The Landlord had the pest control company treat various other units in the building, both on the same floor as that of the Tenants' unit, as well as the floor and second floor above the subject unit.

The property manager characterized the number of cockroaches in the unit as "unbelievable." She stated the Landlord has always treated for cockroaches and other pest and rodents as part of its maintenance, but the level of infestation in the Tenants' unit was beyond the norm. Additionally, she testified that Tenant W.S. told her that Tenant K.S. was a "bin diver," and brought into the unit items found in garbage collection receptacles which may have been the source of the cockroaches. Furthermore, she stated that the balcony of the rental unit showed a large number of items stored outside, supporting Tenant W.S. statement to the pest control technician (relayed to her) that his spouse was a "pack rat." The property manager also testified that she had previously warned Tenant K.S. not to go through the building's recycling bins.

The property manager further stated that the carpeting in the unit would necessarily need to be removed as cockroach eggs would be present. She also stated that Tenant K.S. informed her on March 22, 2024, that there may be bed bugs, but upon inspection it was determined there were none. The property manager stated that during that inspection the unit was dirty and soiled which was a breeding ground for cockroaches. Additionally, she stated the photographs she saw of the unit depicted pots and pans on the floor, a wall that was lined with boxes and the unit was generally cluttered. The property manager also stated that tenants were advised to immediately report pests in their units so the condition could be treated but in this instance the Tenants waited and tried to treat on their own first before disclosing the severity of the problem to the Landlord thereby exacerbating the problem. The property manager testified that repeated treatment throughout the building had been conducted by pest control technicians and would be required to continue.

The Tenants' advocate denied that the Tenants maintained the unit in anything other than a "good condition" and stated the unit was maintained in a sanitary condition.

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. I find the Landlord's One Month Notice for Cause issued March 20, 2024, complies with section 52 of the Act. I further find the Tenants timely applied for dispute resolution to cancel the One Month Notice.

Section 32(2) of the Act provides: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

In this case, the Landlord presented probative evidence that the Tenants had kept their unit or had engaged in conduct that resulted in a cockroach infestation in the subject unit that spread to other units and common areas of the residential building. The Landlord's property manager testified to the pest control technician's statements that the Tenants' unit was the source of the infestation of the pest throughout the building and that the Tenants had maintained their unit in a poor sanitary condition, thus enabling the population growth of the cockroaches. The property manager also testified that other tenants and the cleaning personnel had seen cockroaches emanate from the Tenants' unit. Furthermore, other tenants had complained to the Landlord regarding the spread of cockroaches into their units. The property manager had noted that several of the complaining tenants were long-term tenants, pre-dating the Tenants' residency in the unit, and had not previously complained of a cockroach problem prior to this incident.

The Tenants' evidence that the building was treated for cockroaches before, thus suggesting a perennial problem in the complex, was rebutted by the property manager pointing out that the Landlord routinely sprayed for pests, including cockroaches, and set traps for rodents as part of its maintenance of the rental unit building. Additionally, the Tenants did not deny that their unit was infested with cockroaches, but rather sought to shift the responsibility for the infiltration away from their conduct and/or condition they maintained the unit to speculative sources such as the burned neighboring building.

I find the Landlord has provided sufficient probative evidence to support its issuance of the One Month Notice to End the Tenancy.

For the above reasons, the Tenants' application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause issued March 20, 2024, under section 47 of the Act is dismissed, without leave to reapply.

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

The Tenants' Remaining Claims

The Landlord having met its burden of proof to warrant the issuance of the One Month Notice for Cause, and an order of possession granted to the Landlord, the Tenants' remaining claims are dismissed, without leave to reapply. I make no findings on the Tenants' application regarding these remaining claims.

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

As the Tenants were not successful in this application, their application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenants' application is dismissed, without leave to reapply.

The Landlord's application for a monetary order for compensation is dismissed, with leave to reapply.

I grant an Order of Possession to the Landlord effective **ten (10) days after service of this Order** on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 29, 2024

Residential Tenancy Branch