



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes DRI, MNDC, OLC, RP, PSF, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. To dispute an additional rent increase;
2. To cancel a Notice to End Tenancy given for cause;
3. Monetary order for compensation for damage or loss in the sum of \$1,100.00;
4. An Order that the landlord comply with the Act;
5. An Order that the landlord make repairs;
6. An Order that the landlord provide services required by law;
7. An Order that the tenants receive a rental reduction; and
8. An Order to recover the filing fees paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy? If not, are the tenants entitled to any of the Orders sought?

Background and Evidence

The tenancy began in August 2009. The tenants say they have been asking the property manager to have the heating and dryer vents cleaned and served and to change the filters on the furnace. One of the tenants suffers from asthma and this is causing problems to her health. The tenants say there is no smoke detector in the unit

below them and they are concerned that this affects their own safety. Further that the smoke detector in their own unit is old and yellowed.

With respect to the rent increase, the tenants produced a letter sent to them by the landlord dated October 6, 2010 advising that the rent was \$1,100.00 per month but would increase by 4.0% to \$1,144.00 February 1, 2011. Further that the tenants would have to give 60 days written notice to the landlord if they wished to vacate.

Further, the landlord has issued a Notice to End Tenancy for Cause stating that the tenants have caused extraordinary damage to the rental unit and that they have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord says that, in this regard, the tenants have a cat which violates the tenancy agreement. The tenant says the reason the vents are clogged is because of the cat fur. The landlord's handyman attended the hearing as a witness. He testified that he maintains all of the landlord's rental properties and he has been in this rental property several times to make repairs and check the furnace, etc. The witness testified that the reason the furnace gets clogged is because the downstairs tenant has 6 dogs. The dog fur gets into the furnace and it becomes clogged over and over again no matter how much it is cleaned.

Analysis

With respect to the rent increase, the notice of increase is not on the proper form and it is not in the allowable amount and it is therefore invalid. The rent will remain at \$1,100.00 until the landlord provides a proper notice for the legally allowable amount of rent increase.

The landlord bears the burden of proving cause to end this tenancy. I find that they have not shown that the tenants have caused extraordinary damage nor have they shown that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I therefore

cancel the Notice to end Tenancy and the effect of this is that this tenancy shall continue as though no notice had been served.

With respect to the repairs requested, the landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord and such a term of the tenancy agreement would not be enforceable.

With respect to the matter of the repairs I prefer the evidence of the tenants. I make this preference because I find that this landlord, a property management company charging

fees for acting as a property manager/landlord's, has demonstrated an overall lack of knowledge of the Residential Tenancy Act by their actions and this suggests that they do not understand what their responsibilities are. This lack of knowledge is demonstrated by their attempt to raise the rent beyond the allowable sum, by demanding 60 days written notice to end the tenancy and by drafting a tenancy agreement in which tenants must bear responsibility for the regular servicing and maintenance of all electrical and mechanical equipment provided by the landlord such as the stove fridge, dishwasher, washer, dryer and heating system all of which is contrary to the Act. Having done this I find that it is reasonable and probable that the landlord has not properly maintained the rental property and its electrical, appliances and heating systems because the landlord did not believe they are responsible for those tasks. I will therefore order the landlord to have the furnace serviced and all of the ducts in the rental unit cleaned. Both tasks to be performed by professionally licensed repairpersons.

I also direct the landlord to replace the smoke detectors in this rental unit and in the rental unit below this rental unit as I find that the lack of a smoke detector in the suite below these tenants could be a hazard to these tenants. For this job the landlord may use their usual handyman.

While I have found that the landlord should make repairs, I find that the tenants have failed to prove that they should be awarded \$1,100.00 or any sum in compensation at this time. However, I will allow the tenants to reduce their rent by \$25.00 per month until the repairs set out herein are completed. Once the landlord makes full repairs the tenants must pay full rent. If the tenants disagree that the repairs have been made the landlords may make an application to rescind this rental reduction and to collect any rental arrears that may be owing and any other compensation they may wish to seek.