



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for damage or loss under the Act - Section 67; and
3. An Order allowing the Tenant to reduce rent for repairs agreed upon but not provided.

The Notice to End Tenancy for Cause (the “Notice”) lists the following causes:

1. Tenant is repeatedly later paying rent.
2. Tenant has allowed an unreasonable number of occupants in the unit.
3. Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant requested that evidence filed late be accepted for the Hearing. The Landlord received this evidence package and state that they have reviewed the package and has no objection to its acceptance for the hearing.

Accordingly, the evidence package is accepted for the hearing.

Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to reduce rent for repairs?

Background and Evidence

The tenancy began on July 1, 2004. Rent in the amount of \$526.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$275.00. On October 26,

2011, the Landlord served the Notice by posting the Notice on the door and on November 4, 2011, the Tenant filed its application to dispute the Notice. The Landlord and Tenant state the following in relation to the causes listed in the Notice:

Tenant is repeatedly late paying Rent

The Landlord states that that since May 2011, the Tenant's rent cheques have been received late on two occasions, for July and August 2011. This late payment, in the form of a government cheque, was sent by a Ministry that pays the Tenant's rent to the Landlord however the address used was not the office address of the Landlord but the address of the Landlord's caretaker who resides in the complex where the Tenant's unit is located. These cheques had been sent over a period of several months to this address and it was only during July and August, while the caretaker was away, that the cheques did not get delivered to the Landlord's office on a timely basis. The Tenants state that the Ministry has since been informed of the correct address for the Landlord.

Unreasonable Number of Occupants

The Landlord states that the adult son of the Tenants resides with the Tenants and that this creates an unreasonable number of occupants in the unit. It is noted that the tenancy agreement names two persons as the Tenants and two persons as occupants, for a total occupancy of 4 persons in the unit. It is further noted that the son is listed as one of the occupants and was a minor at the time tenancy started.

Breach of a Material Term

The Landlord states that the Tenants have breached section 11 of the tenancy agreement by not completing a yearly declaration to the Landlord to determine eligibility for a rent subsidy. The Landlord states that this section is a material term of the tenancy agreement as the housing is subsidized and is only provided to those who qualify. By not completing this declaration, the Landlord states that the subsidy cannot be determined. The Landlord states that three letters have been sent to the Tenants in relation to this matter in May, August and October 2011. It is noted that the letter of October 14, 2011, is the first letter that provides a warning of the serious nature of failure to complete the declaration. The Landlord states that they are not aware that the Tenant's son is taking care of the Tenant's and that they are frustrated by the lack of communication with the Tenant's on this matter.

The Tenant's advocate states that she has been working for the Tenants since at least January 2011, has a signed consent form authorizing her to speak to the Landlord and to act on the Tenants' behalf, that the Advocate has spoken with the Landlord's agents on occasions in relation to issues between the Parties, that the Advocate was always

available to speak with the Landlord concerning the Tenants and that the Advocate completed the forms for delivery to the Landlord by the Tenant's son in October or early November 2011. The Tenant's son states that he has not delivered this form to the Landlord as he has no car, that his days are filled with the daily responsibilities of caring for his disabled parents and that by the end of the day, the son simply forgets. The Advocate states that this form is only a technicality as the Landlords are fully aware that the son is not working, is taking care of his disabled parents, that the Landlord, through their previous caretaker, received a letter in May 2011 from the Tenant's physician confirming the son's necessary help to his parents and that the Ministry paying for the rent also accepts the son's role in calculating rental and other benefits for the family. Further, the Advocate states that the Agency responsible for the subsidies determined by the Landlord has policy that can be applied in this situation whereby the extent of the difference in rental calculations is negligible or mere dollars and that the declaration for this year is a simple formality.

Remainder of Tenant's Claim

The Tenants state that due to a previous dispute between the Landlord and Tenant the Parties entered into an agreement on repairs. This agreement drafted by the Advocate and entitled "Addendum to Month to Month Tenancy Agreement" was signed by the Parties on February 24, 2011. The Tenants state that of the 10 repairs itemized in the agreement to be completed by the Landlord by June 30, 2011, only one repair has been done. This item was a clogged sink that was repaired by the Tenant's son after the Landlord provided the Tenant with the necessary tools.

The Landlord states that the repairs have not been done as agreed, that they should have been taken care of but that communication with the Tenants has been difficult and it has been hard to get contractors for a reasonable price. Further, the Landlord states that the repairs listed are primarily cosmetic in nature. It is noted that one of the repairs is to the fridge that leaks water onto the floor and another repair is to the handicap fixtures in the bathroom.

The Tenant claims compensation for the loss of use of the items listed for repairs to the present date in the amount of \$1,050.00 and a 30% reduction in future rent payable until the repairs are completed. The Landlord made no submissions in relation to the amounts claimed and stated that if they are found to be in the wrong, the Landlord would prefer an order for a monthly reduction in rent as opposed to a monetary sum being awarded in full.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given that the Landlord received rent cheques late on two occasions and without determining that the Tenant was responsible for these late receipts, I find that the Landlord has not established cause for repeated late rent payments. Given the acceptable occupancy level of 4 persons at the start of the tenancy and continuing through several years, I find that the Landlord has not established that the Tenants now have unreasonable occupancy numbers in their unit by having their son, an occupant since the beginning of the tenancy, reside with them.

Policy Guideline #8 of the Residential Tenancy Branch sets out as follows in relation to a material term:

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.

Without determining whether the failure of the Tenants to complete the annual declaration is a breach of a material term, I find that the warning letter sent by the Landlord does meet the above noted policy guideline. None of the letters sent by the Landlord and in particular, the letter of October 14, 2011, state that the failure to complete the form is a breach of a material term, nor is there a deadline for completion and forwarding of the declaration included in the letter. Accordingly, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. As none of the causes listed in the Notice have been substantiated, I find that the Notice is invalid and that the Tenants are entitled to cancellation of the Notice. As the Landlord is entitled to a completed declaration by the Tenants, I direct the Tenants to ensure that their son's declaration be provided to the Landlord forthwith.

Accepting the undisputed evidence of the Parties that repairs to the unit, agreed to be completed by the Landlord by June 30, 2011, have not been completed to date, I find

that the Tenant is entitled to compensation. Noting that some of the repairs are cosmetic while others such as the handicapped fixtures are necessary to the health and safety of the disabled Tenants, and further noting that eight months have passed since the agreement was entered into, I find that the Tenant is entitled to the amount of \$1,050.00 as claimed. I order the Tenants to reduce future rent payable by as follows:

- \$300.00 for January 2011
- \$300.00 for February 2012
- \$300.00 for march 2012; and
- \$150.00 for April, 2012.

Further, I find that the Tenant's are entitled to compensation in the amount of \$150.00 monthly until the repairs are completed by the Landlord and I order the Tenants to further reduce their rent payable, starting January 2012, by this amount until the repairs are completed. Should the tenancy end before these amounts can be taken off rent payable, the Tenants are at liberty to apply for a monetary order for any amount remaining outstanding.

Conclusion

The Notice is cancelled and the tenancy continues.

I order the Tenants to reduce their monthly rent payable by the amount of \$1,050.00 as set out above plus \$150.00 monthly from January 2012 until repairs to the unit are completed by the Landlord.

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: December 5, 2011.

Residential Tenancy Branch