



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, the *Residential Tenancy Regulation* (the *Regulation*) or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 3:25 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant (the tenant) testified that the landlord handed him the 10 Day Notice on June 18, 2013. The tenant testified that the tenants sent the landlord a copy of the tenants' dispute resolution hearing package by registered mail on June 20, 2013. They entered late written evidence of a copy of the Canada Post Customer Receipt showing the Canada Post Tracking Number for their registered mailing. The tenant testified that the landlord refused to accept their registered mail, so the tenant handed the landlord a copy of their hearing package on July 16, 2013. I am satisfied that the above documents were served in accordance with the *Act*.

The only written evidence supplied for this hearing by either party was a 10-page package of written evidence submitted by the tenants on Friday, July 19, 2013, the business day before this hearing. The tenant said that he served this evidence package to the landlord on Friday, July 19, 2013, as well. Given the very late provision of the

tenant's written evidence package, I advised the tenants that if I were to proceed to hear their application for a monetary award, I would not likely be able to give much if any weight to evidence submitted so near to the date of the scheduled hearing. The Residential Tenancy Branch's Rules of Procedure call for the provision of written evidence at least five business days before a hearing, and under unusual circumstances a minimum of two business days before a hearing. In this case, the tenants did not provide their written evidence to the RTB until late in the day on the business day before this hearing.

At the commencement of the hearing, the tenant testified that he had been involved in discussions with the landlord before the hearing and understood that the landlord was no longer interested in proceeding with the 10 Day Notice to end this tenancy. The tenant also testified that the landlord has commenced the process of attempting to end the tenancy in this rental property for two individuals who have been living there and disrupting the lives of all of the other tenants in this building. He said that there is a dispute resolution hearing for that tenancy scheduled for August 12, 2013. The landlord has apparently taken the action to try to end the tenancy of the tenants' neighbours, one of the prime objectives in the tenants' application. As the tenants' circumstances may change dramatically should the landlord prove successful in ending the neighbouring tenancy at the August 12, 2013 hearing, the tenants withdrew their application for a monetary award and for an order requiring the landlord to comply with the *Act*, the *Regulation* or their residential tenancy agreement. The tenants' applications for a monetary award for losses arising out of this tenancy and for an order against the landlord are withdrawn. Under these circumstances, I allow the tenants leave to reapply for these remedies.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy began on or about August 1, 2011. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$400.00 security deposit.

The landlord issued the 10 Day Notice seeking \$1,600.00 in rent that was then owing. The tenant testified that he has come to an agreement with the landlord with respect to ways that the tenants can repay the amounts owed to the landlord.

The tenants' application sought a monetary award of \$2,400.00, for the loss in value of their tenancy due to the disruption caused by the neighbouring tenants and the landlord's failure to deal with those tenants.

Analysis

Based on the undisputed evidence before me, I allow the tenants' application to cancel the landlord's 10 Day Notice. The 10 Day Notice is set aside and is of no force or effect.

As the tenants were successful in their application to cancel the landlord's 10 Day Notice and in their attempts to obtain action regarding the neighbouring tenants, I allow the tenants' application to recover their filing fee from the landlord.

Conclusion

The landlord's 10 Day Notice is cancelled and is of no force or effect. This tenancy continues.

I issue a monetary award in the tenants' favour in the amount of \$50.00. To give effect to this monetary award, I order the tenants to reduce their next scheduled monthly rent payment by \$50.00. Their monthly rent resumes to the amount required in their tenancy agreement once this one-time reduction in rent has been completed.

The remainder of the tenants' application is withdrawn. They are at leave to reapply for a monetary award and an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement.

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: July 22, 2013

Residential Tenancy Branch

