



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47; an order regarding a rent increase pursuant to section 43; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant BR testified that he would be representing both tenants during the hearing. The landlord made an oral request for an Order of Possession at the hearing.

The landlord testified that she served the tenants with the 1 Month Notice on November 30, 2014 through regular mail. The tenant BR confirmed receipt by both tenants of the 1 Month Notice. I find the tenants deemed served with the 1 Month Notice, pursuant to section 88 and 90 of the *Act*, 5 days after its mailing.

The tenant BR testified that he served the landlord with an Application for Dispute Resolution package on December 12, 2014 by sending it by registered mail. The landlord confirmed receipt of this package and the tenant BR provided a Canada Post tracking number and receipt. Pursuant to section 89 and 90 of the *Act*, I find the landlord deemed served with the Application for Dispute Resolution package on December 17, 2014, 5 days after registered mailing.

Issues to be Decided

Should the landlord's 1 Month Notice for cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Are either the landlords or the tenants entitled to an order in their favour regarding a disputed rent increase?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month to month tenancy began on September 1, 2011. The current rental amount is \$765.00 payable on the first of each month. The landlord currently holds a security deposit in the amount of \$375.00 paid by Tenant BR on August 28, 2011. The landlord testified that the residential premises are her own; she lives upstairs and the tenants live downstairs in a one bedroom basement suite.

The landlord submitted the notice to end tenancy providing three grounds:

1. the tenants are repeatedly late in paying rent;
2. the tenant BR has allowed an unreasonable number of occupants in the unit;
3. the tenant BR or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenants have been late in paying rent consistently over 2012 to 2013. She testified that, after regular late payments in 2014 (every month until September 2014), she verbally warned the tenant BR that his late payment of rent may result in an end of the tenancy. The landlord testified that the tenants have paid the rent on time since that warning in mid-September 2014. The tenant BR testified that the tenants will continue to pay their rent on time now that they have received this warning, as they have done for the last 4 rental periods.

The landlord testified that the tenant BR has allowed his girlfriend to reside in the rental unit for an extended period of time, creating an unreasonable number of occupants within the unit. Both parties agreed that the tenant's girlfriend ("tenant MS") is living in the rental unit. The landlord provided undisputed testimony that the tenant BR did not advise the landlord or seek permission about a second occupant in the rental unit. Tenant BR argued that two people ("a couple") are a reasonable number of occupants for a 750 square foot, one bedroom suite. He also testified that the rental unit was originally advertised as "suitable for a working couple".

The landlord provided written submissions and testified that the tenants have seriously jeopardised the health or safety of another occupant or the landlord, or in this case, both by taking down the smoke alarm in the kitchen and bedroom of his rental unit. The landlord testified that, on making a repair in the unit, she noted there was no smoke detector on the ceiling. The tenant BR testified that the smoke detector goes off easily and he would regularly take it down while cooking but that he has not done so since advised of the landlord's concern about this activity.

Tenant BR argued that there were no tenancy issues raised with him before the landlord provided notice of a rent increase; there were no warnings or landlord-tenant conversations with respect to late rent or safety issues until the landlord sought to increase the rent based on the additional occupant in the suite.

The landlord testified that, on September 25, she gave a formal notice to the tenants that she intended to increase the rent from \$765.00 to \$850.00 on October 1, 2014, after she became satisfied that the second occupant was indeed residing within the rental unit. She testified that she based this increase on a review of her utility bills, finding that they had increased significantly over the course of the past year. The tenants declined to accept the rent increase.

The landlord testified that, on November 17, 2014, she gave notice to the tenant BR that she required him and his occupant to sign a new tenancy agreement. She testified that she required the occupant to apply to reside as a tenant at the residential premises. In this newly drafted tenancy agreement, the rental amount was increased. The tenants declined to sign the new agreement.

The landlord stated several times that she based the amount of her rent increase on the increase to her utility bills. Her utility bills (particularly gas, water and electricity) had increased approximately \$71.00 on a monthly basis and so the landlord increased the rent by \$85.00, claiming that there were other unquantifiable costs of having a second tenant in the suite.

Analysis – Application to Cancel 1 Month Notice

Late payment of Rent: It is the tenants' responsibility to pay rent on the first of each month as required under the tenancy agreement and the *Residential Tenancy Act*. While the tenant acknowledged that he has paid the rent late regularly in the past, the landlord testified that the tenant has not paid rent late over the past 4 months since the landlord provided a warning to him.

Residential Tenancy Policy Guideline No. 38 sets the standards in considering late payment of rent. A landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether rent payments have been made on time between the late payments. While these are not exceptional circumstances, according to the guidelines in that the tenant has not provided an acceptable reason for

lateness, I find that the attendance and compliance with the warning from the landlord create a circumstance for exception.

As a matter of fairness and equity, there is often acknowledgement of warning letters by the landlord to provide evidence that the landlord allowed an opportunity for the tenants to correct their behaviour. It is often evidence that supports a landlord's claim of non-compliance with the tenancy agreement by the tenants. In this circumstance, both parties testified that, with a warning provided, the tenants have become compliant with the tenancy agreement. He has paid his rent in full and on time from October 1, 2014 up to January 1, 2015, thereby altering his behaviour and the pattern that led to the notice to end tenancy.

The guideline states that a tenancy may end as a result of a minimum of 3 late rent payments. However, after several late payments and issuing a warning, the landlord has now accepted payments in full and on time for several months without further comment until the issuance of this notice. This notice comes months after late payments have stopped. Policy Guideline No. 38 provides, "A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision." I find this is the case with respect to this tenancy.

Unreasonable Number of Occupants: Section 47(1)(c) of the *Residential Tenancy Act* provides that a landlord may end a tenancy for "cause" if there are an unreasonable number of people in the rental unit. The landlord did not dispute the tenant's testimony that this suite is appropriate for a couple. The landlord's stated concern is that the occupant is residing on the rental unit on her residential premises where she lives without formally applying to reside in the unit. The *Act* provides that a tenant has a right to permit guests on the residential premises and that a landlord cannot, unreasonably, prevent occupants or guests of the tenant. I find there is no evidence that, in this case, there are an unreasonable number of occupants in the unit establishing grounds to end the tenancy.

Seriously Jeopardize Health, Safety of other Occupant: The landlord submits that Tenant BR or a person permitted on the property by the tenants has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. In this case, she refers to her own safety and the disconnection of the smoke detector within the unit. As with previous issues between this tenant and landlord, when the landlord made Tenant BR aware of her concern with his removal of the smoke detector, the tenant has abided by her warning.

The language of the legislation, at section 47(1)(d)(ii) of the Act, with respect to this ground is clear in that the jeopardy of the health, safety or lawful right of another occupant or the landlord must be serious, not incidental or fleeting. The landlord had reason to be concerned with respect to the tenant's actions in disconnecting the smoke detector. She took the appropriate steps by notifying the tenants of her concerns. The tenants now comply with the landlord's request with respect to the smoke detector and provided sworn testimony that he will abide by her requirement to do so. In this regard, the safety issue with respect to the smoke detector is resolved. I find the evidence of the tenants disconnecting the smoke detector, in this case, has been dealt with appropriately by both parties in warning and discontinuing the behaviour. I find that the landlord has not established that a serious safety concern remains or requires an end to the tenancy.

Application to Cancel 1 Month Notice: I do not find the landlord has met her burden of proof to justify, on a balance of probabilities there is sufficient cause to end this tenancy, by late payment of rent, by allowing an unreasonable number of occupants in the rental unit, or by creating serious jeopardy to the landlord's safety. Therefore, I grant the tenants' application to cancel the notice to end tenancy. The landlord's oral application for an order of possession is dismissed.

Analysis – Disputed Rent Increase:

According to Residential Policy Guideline No. 37 provides that a landlord may increase rent in two circumstances; when it is calculated in accordance with the guidelines or when it is ordered by an arbitrator on application. Part 4 of the Residential Tenancy Regulations addresses the issue of calculating rent increases. It states that the landlord may undertake to increase the rent on an annual basis based on inflation: "A landlord may impose a rent increase that is no greater than the percentage amount calculated as follows: percentage amount = inflation rate + 2%". For residential tenancies, the standard allowable rent increase for 2014 was 2.2% and the standard allowable increase for 2015 is 2.5%.

Section 23 of the Residential Tenancy Regulation provides other grounds under which a landlord may apply for a rent increase. They include but are not limited to: unforeseen, significant repairs; a financial loss relating to the residential property; the landlord has received their own rental increase. The formula and form of rental increases are well established. According to the Act, any rental increase must either fall definitively within acceptable parameters of an annual increase or be sought through the Residential Tenancy Branch. All rental increases require the appropriate form and notice to the tenant.

I find that the landlord has not made an application for an additional increase pursuant to the *Act*. The landlord's rental increase amount does not fall within the acceptable parameters of an annual rent increase related to inflation. Therefore, the landlord may not increase the rent in the manner that she has attempted.

The landlord has attempted to increase the rent from \$765.00 to \$850.00. This is an increase of \$85.00. This increase is significantly beyond the 2.5% standard for 2015 and the previous standard of 2014. The landlord is only entitled to increase the rent for the rental unit pursuant to the annual allowable percentage and only after following the procedures for notifying the tenants of a proposed Notice of Rent Increase on the prescribed form and in accordance with the *Act*. As the landlord has not followed any of the requirements necessary to increase the monthly rent for this tenancy beyond the allowable prescribed amounts, I allow the tenants' application to cancel the landlord's disputed rent increase. I order that the monthly rent for this tenancy remains \$765.00, until such time as it is revised in accordance with the *Act* and the Regulations.

Given that the tenants have been successful in their application, I grant the tenants recovery of the filing fee for this application.

Conclusion

I grant the tenants' application to cancel the notice to end tenancy. The 1 Month Notice is of no force or effect and the tenancy continues.

I grant the tenants' application in disputing the rental increase by the landlord. I order that the monthly rent for this tenancy is set at \$765.00, until such time as this rent is revised in accordance with the *Act* and the Regulations.

I issue a monetary order in the amount of \$50.00 to the tenants in recovery of the filing fee application. In order to implement this monetary award, I order the tenants to reduce their rent by \$50.00 on a future monthly rental for this tenancy.

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: February 3, 2015

Residential Tenancy Branch

