Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNC, CNR, MNDC, FF

Introduction

In the first application, made April 27, 2015, the landlords made a successful direct request application against the tenants, based on a ten day Notice to End Tenancy for unpaid rent, and were granted an order of possession and a monetary award for unpaid April 2015 rent. The tenants applied, successfully, for review of that decision and the matter was sent back for a new hearing this day.

In the second application, also made April 27, 2015, the tenants apply to cancel a one month Notice to End Tenancy for repeated late payment of rent, dated April 14, 2015, to recover damages for alleged work and services rendered during the tenancy and to recover rent paid pursuant to an alleged ineffective rent increase. The tenants' application also appears to have requested cancellation of a ten day Notice to End Tenancy and to recover deposit money, however those items appear to have had their checkmark boxes struck out and initialed to indicate a withdrawal of those claims. With the agreement of the landlord Mr. F.M., they were dealt with at this hearing.

In the third application, made May 8, 2015, the landlords apply to recover May and June 2015 rent.

As discussed at hearing, the tenants' claim for damages for improvements and more particularly, the work described in the tenants' two invoices dated April 15, 2015 in the amount of $2090.00 and $7615.00 were not dealt with at this hearing. They are claims unrelated to the issues of the validity of the Notices or the question of rent. For that reason and due to the need imposed by the available time to deal with the urgent question of the continuation of the tenant and what rent is due, I exercise the discretion granted to me in Rule 2.3 of the Rules of Procedure, I dismiss the tenants' claims particularized in these two invoices, with leave to re-apply.

I would note for the tenants' future reference that if they do re-apply, then I would recommend that the Residential Tenancy Branch consider waiving the requirement of a filing fee, as the tenants have paid one already.

The tenants filed material on June 2 which contained another invoice, this one dated June 1, 2015 in the amount of $18,800.00 for an alleged overcharging of rent for a basement suite. This purported amendment of the tenants' claim was dealt with at this hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either of the Notices to End Tenancy valid? What is the rent? Are the tenants entitled to recover rent paid under an improper rent increase? Are they entitled to recover for rent overpayment for a basement suite that is an illegal suite? Are they entitled to recover deposit money?

Background and Evidence

The rental unit is a three bedroom house with a basement suite. The tenants rented the entire house. The tenancy started in August 2011 for a one year fixed term and then month to month. The monthly rent was originally $2100.00, due on the first of each month in advance. The landlord received a $1000.00 security deposit.

Before the end of the first year the parties entered into another tenancy agreement commencing June 1, 2012 and at a monthly rent of $2000.00.

It is not disputed that only $1000.00 has been paid for rent due for April 2015 and that no further payments of rent or use and occupation money have been paid.

The landlord Mr. F.M. testified that the rent has been paid late in ten of the past twelve months. He says the January 2015 rent was not paid in full until February 6; the February rent not paid in full until February 9th and the March rent not paid in full until March 5.

Prior to January 2015 he had sent the tenants an email requesting rent on time and says he had verbally requested timely payment as well. In December 2014 he had issued to the tenants a ten day Notice to End Tenancy for unpaid rent. He has issued a similar Notice to the tenants at least once in 2013.
In April 2015, the tenants paid $1000.00 on April 2nd. They requested more time to pay the balance and Mr. F.M. gave them until April 15th to come up with the remaining $1076.00.

On April 14th Mr. F.M. prepared and signed the one month Notice to End Tenancy in question. The grounds given for the Notice were that the tenants were repeatedly late paying rent. That

ground is a permitted ground for a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the "*Act*").

On April 15th Mr. F.M. prepared and signed the ten day Notice to End Tenancy for unpaid rent. Such a Notice is a permitted method for a landlord to end a tenancy under s. 46 of the *Act.*

On April 16th Mr. F.M. sent both Notices to the tenants by registered mail. The tenants received the Notices on April 20th. They still had not paid the balance of April rent.

Section 47 of the *Act* permits a tenant a period of ten days to make an application to dispute a one month Notice. Section 46 permits a tenant five days to either pay the rent demanded in the ten day Notice or to make an application to dispute it.

As noted, the tenants made their application on April 27th, which was a Monday. Given that the Residential Tenancy Branch was not open on Saturday or Sunday, the fifth and sixth days after receipt of the ten day Notice, the tenants' application to dispute it was made within the permitted time under s. 46.

The tenant Ms. C. did not dispute the landlord's evidence about when rent had been paid in the past but says that the landlords always granted the tenants some leeway in paying rent on the time in the past and so should have given them some notice that the landlords would start to require that rent be paid on time.

She says that the ten day Notice is invalid because it was signed on April 15h, the day the payment of the balance of April rent had been extended to. The Notice should be invalid because the tenants had until the end of that day to pay. The rent would not have been "late" until April 16th and so the Notice could only be signed then.

She says she consulted with the Residential Tenancy Branch and as a result, emailed the landlord Mr. F.M., telling him to issue a correct ten day Notice, but he didn't.

Ms. C. testifies that when the landlord raised the rent by $76.00 per month in a Notice of Rent Increase dated December 31, 2012, effective March 1, 2013, she consulted with the Residential Tenancy Branch and as a result, emailed the landlord that the effective date for the increase should be April, not March. The landlord agreed and issued a replacement Notice of Rent Increase of $76.00 effective April 1, 2013.

The tenants have been paying the new rent of $3076.00 since April 2013.

The tenant Ms. C. argues that both Notices were only sent to her as attachments in emails from the landlord. She says the emailing a Notice of Rent Increase is not a permitted method of service and so the increase is an invalid one. The tenants' claim recovery of the $76.00 per month overpayment of rent since March (not April) 2013.

Ms. C. testified that the rent for the first ten months of the tenancy included an extra $100.00 in order for the tenants to pay a $1000.00 pet damage deposit. She says that the landlord must account for that deposit money.

Ms. C. testified that she has learned that the basement suite in the home is an "illegal suite" according to the local government. She says that the original ad for this rental unit was for $1600.00, not including that suite. She says that the tenants paid $2000.00 for the whole house in order to avoid conflict with any lower tenant who might complain about the dogs she and Mr. T. have. She acknowledges that she has not rented out the suite nor attempted to rent it out so far in her tenancy.

In response, Mr. F.M. admits he signed the ten day Notice on the 15th of April but says that because he did not send it until the 16th it should be valid.

In regard to the rent increase Notice, he says he sent both of them by email attachment and also sent each by regular mail to the tenants on the day following the emails. He says that given the time requirements imposed by the *Act* for rent increase Notices (s. 42(2), "at least three months before the effective date…") he realizes the $76.00 rent increase should have started in May 2013, not April. He acknowledges he owes the tenants $76.00 for rent overpayment from April 2013.

He says he rented the whole house to the tenants and did not represent that they could rent out a basement suite to others.

He denies collecting any pet damage deposit.

Analysis

Residential Tenancy Policy Guideline #38 "Repeated Late Payment of Rent" directs that rent will be considered to be repeatedly late if it is late more than three times.

The evidence presented during this hearing proves on a balance of probabilities that that the tenants have been repeatedly late paying rent. They were late the first three months of 2015.

The tenant's evidence that the landlords provided leeway in paying is simply not consistent with the fact that as recently as December 2014 the landlords issued to the tenants a ten day Notice for unpaid rent. The giving of such a Notice is a clear indication that a landlord is not content receiving rent late.

The one month Notice to End Tenancy dated April 14, 2015 is therefore a valid Notice. By operation of s. 47 of the *Act*, the Notice has caused this tenancy to end on May 31, 2015 and the landlords are entitled to an order of possession.

Given this conclusion I need not address the question of the validity of the ten day Notice to End Tenancy.

Regarding the rent increase imposed in 2013, the actual Notice of Rent Increase document sent to the tenants by email attachment in January 2013 appears to be the proper document and duly signed. As well is apparent that the parties had been using email as a form of communication between them on landlord tenant matters.

These circumstances would indicate the rent increase Notice is a document encompassed by the operation of the *Electronic Transactions Act*, SBC 2011, c-10. That legislation provides that a statutory requirement for a document to be in writing and/or signed may be satisfied by an electronic communication such as an email, including an attachment.

Whether or not this is the case, I find it most likely that the landlord did send the Notice of Rent Increase by mail, a permitted method of service under s. 88 of the *Act*. I note that at that time the tenants researched the validity of the first Notice, determined it contained an effective date that was too early, and emailed the landlord about it. I find it reasonable that had there been defect in service of the Notice it would have been discovered by the tenants and raised at that time.

I conclude that the tenants' rent was lawfully increased to $2076.00. I acknowledge the landlords' concession that the increase should have been effective for May 2013, not April and I credit the tenants with the $76.00 overpayment made in April 2013.

I dismiss the tenants' claim that the landlord holds any pet damage deposit. The first tenancy agreement is clear that there is no pet damage deposit. Had things been as the tenant Ms. C. suggests, there would be no reason for the pet damage deposit portion of the tenancy agreement not to have stated it.

I must also dismiss the tenants' claim regarding the "basement suite." Whether or not the local government has determined that such a suite would be unlawful, the fact of the matter is that under this tenancy agreement there is no "basement suite." The tenants rented the entire house. Even had it been otherwise, they have not suffered any loss or damages because they have not attempted to rent out the suite as a separate rental unit.

In result the landlords are entitled to a monetary award of $1076.00 for unpaid April rent, $2076.00 for unpaid May rent and $2076.00 for loss of June rental income, a total of $5228.00, plus recovery of two $50.00 filing fees and less the $76.00 credit acknowledged by the landlords. The landlords' application requests to retain the security deposit money and so I

authorize the landlords to retain the $1000.00 security deposit in reduction of the amount awarded.

There will be a monetary order against the tenants for the remainder of $4252.00.

Conclusion

The tenants' application is dismissed but for those claims for which leave has been granted, above.

The landlords' claim is allowed. They will have an order of possession and a monetary order in the amount of $4252.00.

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: June 09, 2015

Residential Tenancy Branch