



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AARTI INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, RP, RR, FF

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 23, 2015 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord CY ("landlord") and the tenant MS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the rental unit and that she had authority to represent the landlord company named in this application as an agent at this hearing. The tenant confirmed that he had authority to represent "tenant LS," the other tenant named in this application, as agent at this hearing. This hearing lasted approximately 76 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application and the tenants were duly served with the landlords' written evidence.

At the outset of the hearing, the landlord confirmed that she wished to withdraw the landlords' 2 Month Notice, which has an effective move-out date of January 31, 2016. Accordingly, I advised both parties that the landlords' 2 Month Notice, dated November 23, 2015, was cancelled and of no force or effect. This tenancy continues until it is ended in the accordance with the *Act*.

At the outset of the hearing, I advised the tenant that I was unable to deal with issues regarding other tenants in other rental units in this same rental building. The tenant was attempting to act as an agent on behalf of these other tenants in other rental units, who had not filed applications for dispute resolution. I advised the tenant that without an application for dispute resolution, I was unable to adjudicate other parties' disputes.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to make repairs to the rental unit?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Background and Evidence

The tenant stated that this month-to-month tenancy began on July 1, 2012. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenants and the landlord continues to retain this deposit. The tenant confirmed that a written tenancy agreement was signed by tenant LS, who began her tenancy in 2008, and the tenant signed his tenancy agreement in 2012. Neither party provided copies of any tenancy agreements for this hearing. Both parties agreed that the landlord company named in this application became the new

owner of this rental building and assumed the tenants' tenancies as a landlord on October 31, 2014.

The tenants seek a monetary order of \$116.66 for a loss of heat in the rental unit over a period of five days from October 29 to November 2, 2015. The tenant stated that he divided the monthly rent of \$700.00 by 30 days equalling \$23.33 per day and multiplied this by five days, resulting in \$116.66. The tenants provided a copy of a letter, dated November 2, 2014 (the tenant corrected during the hearing that it was meant to read 2015) sent to the landlord, following this incident.

The landlord agreed that the tenant had a loss of heat but it did not last for five days, as the landlords attempted to fix it during this time, so heat was intermittently on and off. The landlord stated that the tenants did not complain to the landlords about the loss of heat, only other tenants in the rental building did. For the above reasons, the landlord agreed to pay half the cost requested by the tenants, at \$58.33.

The tenants also seek a monetary order of \$348.60 plus a monthly rent reduction of \$24.90 for the remainder of this tenancy, for the landlords' failure to provide cable television services at the rental unit. The tenant stated that since the beginning of his tenancy, he was receiving free cable television services from the landlords, until it was unexpectedly disconnected in November 2014. The tenant stated that the landlords have not provided compensation to the tenants for this disconnection of service. The tenants provided a copy of another tenant's tenancy agreement from 1981 in the same rental building. However, the tenant was unable to identify any free cable television services included in rent in that tenancy agreement. The tenant provided a computer printout of a cable television package for \$24.90 per month. The tenant confirmed that at a rate of \$24.90, the tenants have lost 14 months of cable television services, totalling \$348.60.

The landlords dispute the tenants' claims, stating that the tenants cannot prove that they are entitled to free cable television as part of their rent, as they did not produce a written tenancy agreement. The landlord confirmed that all other tenants in the rental building pay separately for their own cable television, as it is not included in rent, and the same applies to these tenants.

The tenants also seek to recover the \$50.00 filing fee paid for their Application.

Analysis

Monetary Award and Rent Reduction

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant tenants must satisfy the following four elements, on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants seek \$65.53 in registered mail fees for mailing hearing-related documents to the landlords from a previous hearing and this current hearing. During the hearing, I advised both parties that the tenants are not entitled to hearing-related costs aside from the application filing fee, as per section 72 of the *Act*. Therefore, the tenants' claim is dismissed in this regard.

I dismiss the tenants' claims of \$348.60 plus a monthly rent reduction of \$24.90 for the remainder of this tenancy for cable television services. Cable television services are not usually included in most standard-form tenancy agreements, they are usually considered an extra service, such as internet services. Therefore, having an additional service included in rent would require proof of same. I find that the tenants failed to provide written documentation, including a tenancy agreement, addendum or another document, showing their entitlement to free cable television as part of their rent. The tenancy agreement provided by the tenants is unhelpful as it does not include cable television with rent and is related to a different tenancy.

I award the tenants \$58.33 for a loss of heat in October and November 2015. I find that the tenants failed to show exactly how long the heat loss was for and that the landlords were negligent by failing to repair the problem. The landlord denied any such complaints by the tenants and the tenants only provided a letter sent to the landlord after the heat was properly restored on November 2, 2015. I find that the tenants did suffer a partial loss of heat but I find that the landlords were attempting to repair the heating problem during this time and they were not neglecting their duties in this regard. Therefore, I award the tenants the amount that the landlords agreed to pay for a partial loss of heat, as I find it is a reasonable amount.

Repairs

The landlord agreed to inspect the following complaints made by the tenant, within approximately one week after the hearing, and to complete repairs after inspection, if necessary:

- 1) burned-out lights in the common areas of the rental building in the hallways, stairways, and emergency exits of all three floors of the rental building;
- 2) a fire alarm that is hanging out of the ceiling inside unit #5; and
- 3) a collapsed bathroom ceiling and the paint peeling off the bedroom ceiling in the tenant's rental unit.

The landlord stated that the washing machine and dryer inside the laundry room of the rental building, which the tenants complained were malfunctioning, will be replaced in the next month.

The tenant also stated that units #9 and #10 of his rental building, which are on the ground floor facing the outside sidewalk, require security bars to be placed back on their windows, as it is a security risk for the tenant's rental unit. The tenant stated that the security bars that were previously there were left in the laundry room in order for renovations to be completed in the above units. The landlord stated that the affected units, as noted above, have not requested the security bars to be placed back onto their windows, so nothing has been done. Further, the landlord stated that the above two units are at the front of the building, while the tenants' unit is at the back of the building, posing no security risk to the tenants. I find that the tenants' requested repairs relate to other units rather than their own and the two affected units did not request these repairs through their own application. I also find that the tenants failed to prove a direct security risk to their own unit. Therefore, I dismiss the tenants' request for repairs in this regard.

At the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlords. I note that I do not have the authority to administer administrative penalties against the landlords, only the Director of the RTB does. Therefore, the tenants must apply for such a penalty through the required procedure as outlined in the *Act*.

As the tenants were only partially successful in their Application, I find that they are not entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

The landlords' 2 Month Notice, dated November 23, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in the accordance with the *Act*.

The tenants' Application for a monetary order of \$348.60 for a loss of cable television services and \$65.53 for registered mail costs for hearing-related documents, is dismissed without leave to reapply.

The tenants' Application for an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee for this Application, is dismissed without leave to reapply.

I order the tenants to deduct \$58.33 from a future rent payment at the rental unit in full satisfaction of the monetary order granted at this hearing and to notify the landlords when such a deduction is made.

I order the landlords to perform inspections that they have agreed to, as noted above in this decision, and to replace the washer and dryer in the rental building as agreed. If after the inspections and replacements, the parties disagree about whether repairs are necessary or whether repairs have been completed in a satisfactory manner, they are at liberty to file a new application for dispute resolution at the RTB.

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, 2016

Residential Tenancy Branch

