



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RR, PSF, OLC, O, MNDC, LRE, CNC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the tenants have requested an order the landlord comply with the Act, that the cost of repairs, services or facilities be deducted from rent; an order the landlord provide services or facilities required by law; compensation for damage or loss under the Act; that the landlord's right to enter the rental unit be suspended or limited and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence.

Preliminary Matters

The tenants submitted their application on December 28, 2015. The landlord confirmed receipt of the application on December 29, 2015.

The landlord confirmed receipt of the tenant's amended application on December 31, 2015. The tenants amended their application to dispute a 1 month Notice to end tenancy for cause issued on that date. The amendment was received by the Residential Tenancy Branch (RTB) on December 31, 2015.

On January 4, 2016 the tenants submitted 24 pages of evidence to the RTB; the landlord received that evidence on December 31, 2015.

Evidence served by the tenants to the RTB on January 5 and January 6, 2016 was received by landlord.

The tenants confirmed receipt of the landlord's 61 pages of evidence given to the RTB on January 27, 2016.

On February 2, 2016 the tenants submitted nine pages of evidence to the RTB. The landlord said that he did not receive this evidence. The landlord said that they did receive a small flash drive. The copy of the tenant's flash drive given to the RTB did not contain any data. This evidence included a copy of a 10 day notice to end tenancy for

unpaid rent or utilities issued on January 28, 2016. The evidence contained a copy of a schedule of parties and water utility bills.

On February 11, 2016 the tenants submitted two separate evidence submissions to the RTB; the landlord confirmed receipt of that evidence.

Two documents submitted by the landlord to the RTB on February 2 and February 5, 2016 were set aside as they were not given to the tenants.

The landlord said they did not receive an amended application, to dispute the 10 day Notice. The landlord agreed that they were prepared to defend the 10 day Notice to end tenancy for unpaid rent or utilities during this hearing.

Issue(s) to be Decided

Are the tenants entitled to a rent reduction for services, facilities agreed upon but not provided?

Should the landlord be Ordered to provide services or facilities required by the tenancy agreement or law?

Should the landlord be ordered to comply with the Act?

Are the tenants' entitled to compensation for damage or loss, including aggravated damages?

Should the landlord's right to enter the rental unit be suspended?

Should the 1 month Notice to end tenancy for cause issued on December 31, 2015 be cancelled?

Should the 10 day Notice to end tenancy for unpaid rent or utilities issued on January 28, 2016 be cancelled?

Background and Evidence

The tenancy commenced on April 1, 2015; rent is \$1,300.00 due on the first day of each month. The tenants pay utilities; the addendum signed by the parties requires water bill payment directly to the landlord. A copy of the tenancy agreement and addendum were provided as evidence.

On December 31, 2015 a one month Notice ending tenancy for cause was issued. The Notice had an effective date of January 31, 2016. The Notice included three reasons for ending the tenancy:

- The tenants have allowed an unreasonable number of occupants in the unit;
- The tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- The tenants have assigned or sublet the rental unit.

The landlord said that the rental unit is a three bedroom home; approximately 1,600 square feet in size. The tenants were not given permission to have anyone live in the

home except those who signed the tenancy agreement. One of the tenants has been allowing her husband to live in the rental unit; which constitutes an unreasonable number of occupants.

There are three co-tenants named on the tenancy agreement. The landlord confirmed there is no term limiting the number of occupants. Tenant, M.S. said that her husband, J. S. has been staying with her, off and on. J.S. lives in Vernon.

There was no dispute that the landlord gave the tenants permission to install a security system in the rental unit. The tenants received a letter issued by the landlord on December 7, 2015 requesting the security code. The landlord reminded the tenants that RTB policy #1 suggests the code should be given to the landlord; unless otherwise ordered by an arbitrator. The tenants have been warned in writing, but have yet to provide the landlord with the code. The landlord confirmed that there is not a term in the tenancy agreement that mentions a security system.

The tenants said they were waiting until the hearing before they would provide the security code to the landlord.

The tenants said that there are issues with the landlord's entry to the rental unit. The tenants want the landlord to contact only one of the three tenants, as one of the tenants is unwell. The tenants said the landlord will deliberately go to the basement door where he knows the ill tenant sleeps.

There was no dispute that on January 28, 2016 the landlord issued a 10 day Notice ending tenancy for unpaid rent or utilities. During the hearing the landlord confirmed that the \$125.85 water bill that the Notice was based on had been paid by the tenants on January 4, 2016. The tenants were to pay the landlord directly, but had paid the city. The landlord said that when he went to serve the tenants the Notice he had told the tenants to tear that Notice up. The tenants said they showed the landlord proof of payment made directly to the city and that they were not told to tear up the Notice.

Analysis

I have considered the one month Notice to end tenancy for cause issued on December 31, 2015 and find that the landlord has failed to prove, on the balance of probabilities that the tenancy should end for any of the reasons on given on the notice.

The tenancy agreement does not limit the number of occupants in the rental unit. I find that in the absence of term of the tenancy limiting the number of occupants that the landlord has not proven that four occupants in a three bedroom, 1,600 square foot home is unreasonable.

I note that J.S. is included as an applicant on the application for dispute resolution. The tenancy agreement supplied as evidence shows S.T. and J.S. as tenants; named on the first page of the tenancy agreement. The signatories on the tenancy agreement for the tenancy show as S.T. and M.S. During the hearing the parties did not dispute the presence of three tenants. The landlord was objecting to the presence of fourth person who is not named on the tenancy agreement.

There was evidence before me that the landlord has made a written request for the security system code. The tenants confirmed that they have yet to provide that code to the landlord. In order to end a tenancy for breach of a material term of the tenancy, a term must be contained in the tenancy agreement or addendum that has in fact been breached. That term must be so critical to the tenancy that even one breach could end the tenancy. The tenants have not followed the policy that is suggested by the RTB; however, that failure does not support the ending of the tenancy. Policy is a guideline only; the Act takes precedence. Therefore, I find there has not been a breach of a material term of the tenancy agreement, as no such term exists.

There was no dispute that the tenants have not sublet the rental unit as they remain living in the unit. Therefore, this reason on the Notice is not supported.

Therefore, I find that the landlord has failed to prove the reasons ending tenancy provided on the one month Notice to end tenancy for cause issued on December 31, 2015 and that the Notice is cancelled.

In relation to the 10 day notice to end tenancy issued on January 28, 2016, it is unknown why the landlord agreed to defend this Notice during the hearing when the landlord later confirmed that the unpaid utilities had been paid on January 4, 2016. The landlord said that when he served the Notice to the tenants and realized the utilities had been paid he told the tenants to tear the Notice up. The tenants said they were not told to tear the Notice up and that on February 2, 2016 they amended their application to dispute the Notice.

From the evidence before me the tenants are to pay their share of the water bill to the landlord. In January 2016 the tenants made an error and paid the city directly. Therefore, I find that the utility bill was paid and that the Notice issued on January 28, 2016 is of no force and effect. The landlord was shown the receipt for payment when the Notice was served, at which point it would have been wise to not serve the Notice. A tenant should not ignore any Notice that is served.

In relation to access to the rental unit I have appended section 29 of the Act after the conclusion of this decision. Access should be for a reasonable purpose and made in accordance with the Act. The landlord is encouraged to use the main door to the unit rather than the basement door, where the ill tenant sleeps.

In relation to the security system code, I find that policy takes a reasonable stance; therefore, pursuant to section 62(3) of the Act I order the tenants to provide the landlord with the security system code. The tenants agreed to immediately provide a copy of the code and understand that if the code is changed, in the absence of an order by an arbitrator, they must provide the landlord with any new code.

Section 2.3 of the Residential Tenancy Branch Rules of procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, as the tenants have included matters in the application that are not sufficiently related to the Notices ending tenancy I find that the balance of the claim is dismissed with leave to reapply within the legislated time-limit.

As the tenants' application has merit I find that the tenants may deduct the \$50.00 filing fee from the next months' rent due.

Conclusion

The one month Notice to end tenancy for cause issued on December 31, 2015 is of no force and effect.

The 10 day Notice ending tenancy for unpaid rent or utilities issued on January 28, 2016 is of no force and effect.

The tenancy will continue until it is ended in accordance with the Act.

The balance of the tenants' application is dismissed with leave to reapply.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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 11, 2016

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

