



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, dri, erp, mndc, o, olc, rp, ff

Introduction

The tenants have applied for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities), and 7 other orders. At the hearing, the landlord orally requested an Order of Possession.

The tenants confirmed that the claim to cancel the 10 Day Notice to End Tenancy was the most important issue to deal with at this hearing. In terms of most of the other claims, I note that one of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with an array of issues of concern to the tenants in one short hearing. Accordingly, hearings are generally limited to issues that are related in fact and law. In this case many of the tenants' requests (such as a monetary claim, and claims for repairs) are not related to the one month Notice given by the landlord. I have therefore dealt with the claim of the disputed Notice as well as the claim of an illegal rent increase (an issue I find related in fact or law). The rest of the claims are dismissed pursuant to Rule 2.3, with liberty to re-apply.

Both parties have exchanged evidence packages with each other. There are no issues regarding as to service of the 10 Day Notice, or regarding notice of this hearing.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy (the "Notice") dated May 13, 2016, effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Has the landlord given the tenant an illegal rent increase, and if so, what is the effect?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began March 1, 2011. Rent at that time was \$1,500.00 plus utilities. A security deposit and pet damage deposit of \$750.00 each was paid. For a 10 month period the tenants also paid the landlord a further \$300.00 month, under a separate "rent-to-own" agreement. That agreement was abandoned by the tenants after 10 months.

Effective January 1, 2015, the tenant began paying rent of \$1,545.00 per month. This followed an email exchange in which the landlord requested a rent increase, and the

tenants agreed to pay higher rent. There was never a formal Notice of Rent Increase given by the landlord to the tenants.

The landlord has maintained a spreadsheet throughout the tenancy which itemizes rental payments, utility payments, rental arrears owed, and the like. Based upon his calculations, there were rental arrears carried forward for the past year, and as of the date of the 10 Day Notice (May 13, 2016) the balance owing by the tenants was \$3,515.53. No rent has paid by the tenants since.

The tenants dispute the accuracy of the landlord's calculations, and note the spreadsheet does not go back to the very start of the tenancy. The tenants are uncertain as to how much is actually owed, and have not maintained their own records as to the amount of rent and utilities paid. The tenants written statements clarify that they stopped paying full rent, in part to encourage the landlord to make necessary repairs to the premises.

Analysis

I address first the issue of the rental increase, a matter that is governed by Part 3 of the Residential Tenancy Act. Section 43 provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations (which in 2015 was 2.5%) unless a higher amount was agreed to in writing by the tenant, or unless the landlord applies for and receives approval for a higher increase (not applicable in this case). Section 42 requires that a minimum three month notice period must be given, and that the notice of the rent increase must be in the approved form. Policy guideline 37 also addresses the requirements of an agreement regarding a higher rental increase. Among other things, the guideline clarifies that payment by the tenant of a rent increase in an amount more than the allowed annual increase does not constitute an agreement to a rent increase in that amount.

In this case the proper form was never used, and the alleged agreement regarding the rental increase was all transacted through email. This contravenes the requirement in section 42 that the proper form must be used. I therefore find that no binding and legal rental increase was ever in effect.

The landlord's calculations of the rental arrears include 15 months of rent at \$1,545.00, whereas the actual rent has remained \$1,500.00 throughout, since no proper Notice of Rent Increase was ever given. This results in a notional credit of \$765.00 which is applied to the arrears of rent owing by the tenants.

I turn to the issue of the 10 Day Notice to End Tenancy. Section 26(1) of the Residential Tenancy Act requires that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenants were required to pay rent on the first day of each month, even though the landlord had not have provided certain services, or made necessary repairs. The tenants could have filed an application for an order for repairs, but it was not a legal option for the tenants simply to withhold or refuse to pay

rent. The landlord was therefore entitled in law to serve the notice ending this tenancy. Upon receipt of that notice, in order for the tenancy to continue, the tenants should have paid the rental arrears due within the required 5 day period, in order to have the tenancy continue. The tenants failed to do so. Even with the credit of \$765.00 for the illegal rent increase, the tenants knew or should have known that they were in arrears.

In terms of the actual amount of rent owed, the tenants dispute the accuracy of the landlord's spreadsheet, but do not know what the correct amount owed is. In the absence of any other evidence, I accept the landlord's testimony as to the accuracy of his spreadsheet. I find that as of May 13, 2016, the balance owing by the tenants was \$3,515.53 less \$765.00, totalling \$2,750.53. It is this sum that should have been paid by the tenants in order for the tenancy to continue.

Although the amount owing is reduced, the 10 Day Notice is found effective to end this tenancy, and the landlord has established a right to possession. The tenants' claim to have the notice cancelled is dismissed. The tenancy has ended, and the tenants must vacate immediately.

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 5 days following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement..

Conclusion

The tenants' claim to cancel the notice ending the tenancy is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 5 days following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

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 08, 2016

Residential Tenancy Branch