



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSSANO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR; MT, CNR, MNDC, RP, RR, FF

Introduction

This hearing dealt with the landlord's application against one tenant, "tenant DB," pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

This hearing also dealt with both tenants' cross-application against the landlord, pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 7, 2016 ("10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- 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 landlord 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 their application from the landlord, pursuant to section 72.

The landlord's agent, JVV ("landlord") and one tenant, SF ("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 tenant initially intended to call "witness CM" but it was not necessary, as the landlord agreed to the tenants' version of events regarding refusal to accept cash rent. The tenant confirmed that she had authority to represent tenant DB as an agent at this hearing. This hearing lasted

approximately 68 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlord's 10 Day Notice on June 7, 2016. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 10 Day Notice on June 7, 2016.

Preliminary Issue – More time to Cancel the 10 Day Notice

As per section 66 of the *Act*, I grant the tenants more time to make their application to cancel the landlord's 10 Day Notice. I accept the tenant's evidence that she was advised by an information officer at the RTB that she had until June 14, 2016 to dispute the 10 Day Notice. I also find that the landlord's 10 Day Notice is incorrect on its face as it stated the incorrect rent amount due on June 1, 2016.

The tenant's application was filed one day late on June 14, 2016, as it was due by June 13, 2016, the next business day when the RTB offices are open. Further, the tenants did not apply past the effective date of the 10 Day Notice, which is June 18, 2016. Therefore, I find that the tenants are not barred by section 66(3) of the *Act*, from applying for more time to cancel the notice.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

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 landlord 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 their application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. The landlord owner and property management group have remained the same throughout this tenancy, although they have changed names. This tenancy began on June 7, 2003 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. A security deposit of \$350.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit. A written tenancy agreement was signed by both parties. Both parties provided a copy of the original written tenancy agreement which indicates that rent of \$700.00 was due on the first day of each month. Both parties also provided copies of two Notices of Rent Increase from 2012 ("first NRI") and 2016 ("second NRI").

The landlord seeks an order of possession based on the 10 Day Notice and the tenants seek to cancel the 10 Day Notice. The landlord also seeks a monetary order of \$1,588.00 total for two months of unpaid rent and parking from June to July 2016. The tenants seek a monetary order of \$12,497.45 plus the \$100.00 filing fee, orders for the landlord to perform repairs in the rental unit, and a rent reduction to \$700.00 per month for the landlord's failure to complete repairs.

Analysis

Rent Increase and 10 Day Notice

I find that the tenants agreed that the landlord could increase their rent from \$700.00 to \$726.00 at the beginning of this tenancy.

I find that the legal rent for this rental unit is \$757.00 per month as per the first NRI, effective on May 1, 2012. Both parties agreed that the landlord gave the proper three month notice period to the tenants and the \$31.00 amount is within the allowable *Regulation* amount of 4.3% for 2012 to raise the rent from \$726.00. I find that the landlord indicated the incorrect total rent due of \$772.00 because the landlord added the \$15.00 parking charge to the \$757.00 and indicated that it is rent. I find that parking

is \$15.00 per month in addition to rent, but is not to be calculated as rent. The tenant confirmed that the landlord invoked a \$15.00 per month parking charge and that the tenants agreed to this charge.

I cancel the landlord's second NRI, dated January 28, 2016, with an effective date of May 1, 2016, which attempted to raise the rent from \$772.00 to \$794.00, which is more than the allowable 2.9% Regulation amount for 2016. The landlord cannot increase the parking charge together with the rent. Therefore, the rent of \$757.00 could have been increased from the first NRI, not the \$772.00 amount.

Therefore, I find that the 10 Day Notice that was issued to the tenants, indicating \$794.00 was due on June 1, 2016, indicated an incorrect rent amount. The rent does not include the parking charge and the landlord illegally tried to raise the rent from \$757.00 to \$794.00. The landlord also refused to accept rent because the tenants wanted to pay cash and the landlord changed its policy to not accept cash. During the hearing, I **cautioned the landlord that he cannot refuse to accept rent from the tenants, whether paid in cash and regardless of whether they are full or partial payments.**

Accordingly, I allow the tenants' application to cancel the 10 Day Notice and I dismiss the landlord's application for an order of possession for unpaid rent. The landlord's 10 Day Notice, dated June 7, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenants did not overpay the landlord for rent because they paid \$757.00 plus \$15.00 for parking which totals \$772.00 from May 1, 2012 until May 31, 2016. Both parties agreed that the tenants did not pay \$794.00 in rent to the landlord because the landlord refused to accept cash rent for June and July 2016.

I order that the monthly rent for the tenants' rental unit is \$757.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

Landlord's Monetary Order

As both parties agreed that the tenants owe rent for June and July 2016, I find that the landlord is entitled to a monetary order of \$1,514.00 for rent (\$757.00 for each month from June to July 2016) and \$30.00 for parking (\$15.00 for each month from June to July 2016), totaling \$1,544.00. The monetary order is only enforceable against tenant DB, not the tenant that appeared at this hearing, as the landlord's application was only made against tenant DB.

Tenants' Requested Repairs

Both parties agreed that the landlord will perform the following repairs at the tenants' rental unit:

- 1) repairs to the cracks in the walls outside the closet, the cracks in the ceiling of the bedroom and the cracks in the living room by the window;
- 2) replacement of the broken window in the bedroom;
- 3) finishing the installation of the dishwasher.

Accordingly, I order the landlord to perform the above repair to #2 by July 29, 2016 and the repairs to #1 and #3 by August 12, 2016. If the landlord does not complete the above repairs by the above deadlines, I order the tenants to deduct \$50.00 from their monthly rent for each repair number (#1, 2, 3) beginning on the first day of the following month, until the repairs are completed.

The landlord agreed to inspect the gap in the rental unit patio window in order to determine if any repairs are required. Accordingly, I order the landlord to perform the above inspection by August 5, 2016.

I order the landlord to inspect the black mold under the toilet and on the bathroom walls in the rental unit by August 5, 2016, in order to determine if any repairs are required. The landlord said that this was a cleanliness issue for the tenants, while the tenants said that it was caused by the landlord.

If the parties disagree as to whether the repairs have been sufficiently completed or whether repairs are required, both parties have leave to reapply at the RTB for determination.

I dismiss the tenants' claim for a replacement of the carpet in the rental unit, as I find that this is a cosmetic renovation, rather than a required repair.

Both parties agreed that the landlord will provide the tenants with paint at the landlord's own cost, in order for the tenants to paint the entire rental unit at their own cost.

Tenants' Monetary Claim

When a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claim. To prove a loss, the 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 landlord 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

As advised to the tenants during the hearing, I dismiss their claims without leave to reapply for \$27.45 for developing photographs, \$70.00 for gas costs and \$400.00 for lost wages, as they are hearing-related costs that are not recoverable under the *Act*. The only hearing-related costs are for filing fees.

I dismiss the tenants' claims for \$5,000.00 for asthma medications and \$2,000.00 for pneumonia medications, without leave to reapply. The tenants said that the mold in the rental unit caused them to suffer from the above ailments. I find that the tenants failed part 3 of the above test because they did not provide sufficient documentation to show that they spent the above amounts. The tenants only provided documentation to show that their insurance company paid \$127.44 total for two medications.

I dismiss the tenants' claim for \$5,000.00 for a loss of quiet enjoyment and stress in the rental unit. The tenants said that they had to deal with a drunk building manager and received 10 Day Notices from the landlord after attempting to pay rent that was refused by the landlord. I find that the tenants failed to substantiate the amount for which they applied. I also find that the tenants only provided copies of two 10 Day Notices from the landlord, for which the landlord said that he was unaware that he could refuse cash rent payments. Therefore, I find that the tenants failed parts 2 and 3 of the above test.

Accordingly, the tenants' application for a monetary order of \$12,497.45 is dismissed without leave to reapply.

As the tenants were only partially successful in their Application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application for more time to cancel the 10 Day Notice and cancellation of the 10 Day Notice, is allowed. The landlord's application for an order of possession for unpaid rent is dismissed without leave to reapply. The landlord's 10 Day Notice, dated

June 7, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the monthly rent for the tenants' rental unit is \$757.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

I order the landlord to perform repairs as noted above, by the deadlines indicated. I order the tenants to deduct the above amounts as indicated from monthly rent, if the landlord fails to perform the required repairs.

The remainder of the tenants' application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,544.00 against tenant DB only. Tenant DB must be served with this Order as soon as possible. Should tenant DB fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 19, 2016

Residential Tenancy Branch