



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 19, 2016 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 30 minutes. The two tenants 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 tenants testified that they served the landlord with the tenants' application for dispute resolution hearing package ("Application") on June 29, 2016 by way of registered mail. The tenants provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on July 4, 2016, five days after its registered mailing.

The tenants testified that they received the landlord's 1 Month Notice on June 28, 2016 by way of regular mail. The reason indicated on the notice is that the "tenant has allowed an unreasonable number of occupants in the unit/site." In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on June 28, 2016.

At the outset of the hearing, the tenants testified that they were no longer seeking to recover the \$100.00 filing fee from the landlord. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

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

Background and Evidence

The tenants testified regarding the following facts. This month-to-month tenancy began on August 1, 2014. Monthly rent in the current amount of \$700.00 is payable on the first day of each month. A security deposit of \$337.50 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The rental unit is a two-bedroom, one-bathroom basement suite in a house. The tenants continue to reside in the rental unit.

The tenants maintained that repairs to a water leak are required in their rental unit. They confirmed that there is a severe water leak in the entranceway to their unit and in their son's bedroom to the right of the entranceway. They noted that when it rains, the water comes between the entranceway door sill and the cement and there is a drainage problem, which requires proper caulking. The tenants explained that the leak causes the carpets and walls to become soaked with water and that using drying fans, especially during the cold winter months, does not help much. They attempted to apply tape to the seam in the entrance doorway to keep the flow of water down but multiple towels have to be used to keep the floor dry, which causes additional laundry to be done and increases the hydro consumption. They indicated that there may be mold under a baseboard because it is pulling away from the wall in the right corner of their son's bedroom.

The tenants said that they have notified the landlord about the leak approximately four to five times, by way of telephone, since the end of October 2015. They confirmed that they also sent a letter, dated June 18, 2016, to the landlord regarding the need for repairs to the water leak. They provided a copy of this letter for this hearing. The tenants stated that the landlord has not fixed the problem or attempted any repairs, despite their son offering assistance as he is a drainage expert.

Analysis

1 Month Notice

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on June 28, 2016 and filed their Application on June 29, 2016. Accordingly, the tenants filed within the ten day limit under the *Act*.

Where tenants apply to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing or provide any written evidence. The landlord did not meet his onus of proof. Therefore, as advised to the tenants during the hearing, the landlord's 1 Month Notice, dated June 19, 2016, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the *Act*.

Repairs

Based on the undisputed testimony of the tenants, I find that there is a water leak that requires immediate repair in the tenants' rental unit.

I order the landlord to inspect the entire rental unit and to perform repairs to any areas where water is leaking, particularly the entranceway and the tenants' son's bedroom, until the leaking stops. The landlord must complete the above repairs by August 26, 2016.

If the landlord does not complete the above inspection and repairs by August 26, 2016, I order the tenants to deduct \$200.00 from their monthly rent beginning on the first day of the following month, until the repairs are completed.

If the parties disagree as to whether the repairs have been sufficiently completed, both parties have leave to reapply at the Residential Tenancy Branch for determination and compensation.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated June 19, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to complete the above inspection and repairs by August 26, 2016. If the landlord fails to comply, I order the tenants to deduct \$200.00 from their monthly rent beginning on the first day of the following month, until the repairs are completed.

The tenants' application to recover the filing fee is dismissed without leave to reapply.

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: August 11, 2016

Residential Tenancy Branch