



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, ERP, RP, RR

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 30, 2016 ("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 landlord to make emergency and regular repairs to the rental unit, pursuant to section 33; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord did not attend this hearing, which lasted approximately 38 minutes. The tenant AB ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to speak on behalf of "tenant NB," the other tenant named in this application, as an agent at this hearing (collectively "tenants").

The tenant testified that the landlord was personally served with the tenants' application for dispute resolution hearing package ("Application") on July 13, 2016. In accordance with section 89 of the Act, I find that the landlord was served with the tenants' application on July 13, 2016.

The tenant testified that the tenants personally received the landlord's 2 Month Notice on July 1, 2016. The notice indicates an effective move-out date of August 31, 2016. The reason indicated on the notice is that the "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or

child of that individual's spouse)." In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on July 1, 2016.

Issue to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

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 emergency or regular repairs to the rental unit?

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

Background and Evidence

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

The tenant testified regarding the following facts. This tenancy began on June 1, 2012 for a fixed term ending on May 31, 2019 with the former landlord. The current landlord named in this application assumed this tenancy around July 2015, when he purchased the property. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants and the current landlord retains this deposit. A written tenancy agreement with the former landlord, dated June 13, 2012, was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The tenants seek to cancel the landlord's 2 Month Notice. The tenants also request the landlord to make repairs to a leaky bathtub faucet and pest control for rats in the rental unit. The tenants seek compensation for repairs they completed on behalf of the landlord in the amount of \$290.24. The tenants seek a future rent reduction of \$200.00 per month for a loss of trees at the rental unit.

Analysis

2 Month Notice

In accordance with section 49(8) of the *Act*, the tenants must file their application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants received the 1 Month Notice on July 1, 2016 and filed their Application on July 12, 2016. Accordingly, the tenants filed within the fifteen day limit under the *Act*. Where tenants apply to dispute a 2 Month Notice on time, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. The landlord did not appear at this hearing to provide any submissions. The landlord did not meet his onus of proof. Therefore, the landlord's 2 Month Notice, dated June 30, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Repairs

Based on the undisputed testimony of the tenant, I find that there is a water leak in the bathtub faucet that requires immediate repair as well as a rat problem that requires immediate pest control in the tenants' rental unit.

I order the landlord to inspect the rental unit and to perform repairs to the bathtub faucet where the water is leaking, until the leaking stops. I further order the landlord to inspect the rental unit and to provide pest control to get rid of the rats in the rental unit. I order the landlord to complete the above repairs by September 16, 2016.

If the landlord does not complete the above inspection and repairs by September 16, 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.

Based on the undisputed evidence of the tenants, I award them \$290.20 for making repairs in the rental unit, for which the landlord was responsible. The tenants applied for \$290.24 but the payments made based on their receipts total \$290.20. The tenant provided evidence that the tenants bought tarps in order to cover a leaky roof, they bought chemicals and tools to unclog the bathtub drain, and they bought rat traps to get

rid of the rats at the rental unit. The tenant said that he advised the landlord about the above problems but the landlord failed to fix them.

Loss of Quiet Enjoyment

Section 28 of the *Act* deals with tenants' rights to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. In this case, 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.

I dismiss the tenants' claim for a rent reduction of \$200.00 per month for a loss of quiet enjoyment at the rental unit, without leave to reapply. The tenant maintained that the landlord cut down a number of trees at the rental unit, causing a loss of shade and privacy and rendering the yard "useless." The tenant explained that people now walk through the property and steal items. I find that the landlord, who is the owner of the property, is entitled to maintain his yard as he sees fit, including cutting down trees. The tenants did not provide any written contracts indicating that the landlord was not permitted to cut down trees at the rental unit during the tenants' tenancy. The tenants failed part 2 of the above test. The tenants did not provide a breakdown of the above amount, stating only that it was "reasonable" but not explaining why. The tenants failed part 3 of the above test.

Conclusion

I allow the tenants' application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated June 30, 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 September 16, 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.

I order the tenants to deduct \$290.20 from their future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award made at this hearing.

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 29, 2016

Residential Tenancy Branch

