



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR O FF – Landlord’s application
 CNR DRI OLC FF – Tenants’ application

Introduction

This hearing was originally scheduled to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 11, 2016. The Landlord filed seeking an Order of Possession for cause; for other reasons; and a Monetary Order for unpaid rent and/or utilities plus recovery of the filing fee.

During the course of this proceeding the Tenant testified he wished to have his application for Dispute Resolution heard during the October 5, 2016 hearing. Upon review of the Residential Tenancy Branch (RTB) file management system I confirmed the Tenants had filed an application for dispute resolution on September 9, 2016 which was not scheduled to be heard until November 3, 2016. The Tenants filed seeking an Order to cancel a 10 Day Notice to end tenancy for unpaid rent and/or utilities; to dispute an additional rent increase; to order the Landlords to comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee.

Rule of Procedure 2.10 provides that applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent.

Given the circumstances presented to me during the hearing, I found it would not be prejudicial to either party to join the applications to be heard during the October 5, 2016 hearing. As such I proceeded to hear submissions regarding both applications for dispute resolution, pursuant to Rule of Procedure 2.10. The parties were advised that the November 3, 2016 hearing had been cancelled.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord’s agent (hereinafter referred to as the Landlords), and the male Tenant. The Landlord’s application for Dispute Resolution listed one applicant Landlord and one respondent Tenant. The Tenants’ application for Dispute Resolution and the written tenancy agreement, submitted into evidence by the both parties, listed two Landlords and two Tenants. As such the style of cause of this Decision lists both Landlords and both Tenants.

As stated above the hearing was attended by only one Tenant. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords affirmed they served the Tenant with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submissions as evidence for these proceedings.

The Tenant testified he attempted to personally serve the Landlords with copies of his evidence; application for Dispute Resolution; and notice of hearing documents and when the Landlords refused to answer their door he posted the documents to the door.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Did the parties mutually agree, in writing, to change the terms of the tenancy agreement?
2. Has the 1 Month Notice issued May 12, 2016 been waived?
3. Have the Tenants been issued an illegal rent increase?
4. Should the 10 Day Notice to end tenancy be upheld or cancelled?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began on November 19, 2015. Rent was initially \$1,050.00 payable on the first of each month. On November 19, 2015 the Tenants paid \$525.00 as the security deposit.

The Landlords' submissions

On May 12, 2016 the Landlords posted a 1 Month Notice to end tenancy to the Tenants' door. That Notice listed an effective date of July 1, 2016 and the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlords testified they heard no response from the Tenants after they served them the 1 Month Notice. They asserted the Tenants were very quiet which led them to believe the Tenants were getting ready to move out in accordance with the 1 Month Notice.

The Landlords stated they began advertising and showing the rental unit to prospective new tenants shortly after serving the Tenants with the 1 Month Notice. The Landlords submitted that they secured replacement tenants and when the new tenants showed up on June 30, 2016 to begin to move into the basement suite the male Tenant approached them saying they could not move out yet because the Tenants' condominium purchase had not been finalized.

The Landlord stated the existing Tenant begged the Landlords to let them stay an additional two months. A mutual agreement was reached on new terms and they agreed to enter into the hand written two page agreement dated June 30, 2016; which was submitted at page 13 and 14 of their evidence. That agreement included, in part, as follows:

- *You owe us: \$550.00 – the last 3 months of your usage for hydro*
**[Tenant's name] only paid \$400.00. He owes \$150.00 more*
- *You are only allowed to stay until August 31, 2016*
- ✓ *There is no wiggle room. This is the final 2 months you are allowed to stay at this basement.*
- *July 1st, 2016 – is the new tenancy it is \$1200.00 every month.*

[Excerpts reproduced as written]

The Landlords asserted the Tenant had verbally agreed to pay 40% of the utilities when negotiating to stay in the unit after receipt of the 1 Month Notice. They stated the Tenant signed the aforementioned agreement in front of them and then he took it down to the basement for his wife to sign before returning it to them. That agreement states there

would be a new tenancy agreement to sign; however, the Tenants refused to sign the new tenancy agreement.

The Landlords testified the Tenants paid \$400.00 on June 30, 2016 towards the \$550.00 outstanding utilities. \$150.00 remains outstanding for utilities and no payments have been made for July, August, September or October utilities.

The Tenants paid \$1,200.00 for July and August 2016 rent; however, they only paid \$1,050.00 for September 2016 rent; leaving a balance due of \$150.00. The Tenants have not paid anything towards the \$1,200.00 October 1, 2016 rent.

On September 5, 2016 the Landlords served the Tenants a 10 Day Notice to end tenancy by posting the Notice to the Tenants' door. The Notice listed \$150.00 outstanding rent that was due September 1, 2016 and \$445.00 as unpaid utilities with an effective date of September 15, 2016.

The Landlords testified that a second 10 Day Notice was posted to the Tenants' door on October 2, 2016 when the Tenants failed to pay their October 1, 2016 rent and the past due amount from September 1, 2016. The Landlords now seek an Order of Possession and a Monetary Order for the unpaid rent and utilities.

The Tenant's submissions

The Tenant initially testified he had received the 1 Month Notice on May 12, 2016. He later changed his testimony to say he received the 1 Month Notice on May 11, 2016. He asserted he did not file an application for Dispute Resolution to dispute that Notice because he entered into a mutual agreement with the Landlords to continue the tenancy on May 12, 2016.

The Tenant confirmed they signed the written agreement submitted in the Landlords' evidence; however, they signed it on July 1, 2016 and not June 30, 2016. He initially stated he had entered into a mutual agreement to continue the tenancy and then he asserted he was forced into signing that agreement because if he did not sign it he would have to move out.

The Tenant testified he paid \$1,050.00 for September 2016 and nothing for October 2016 rent because he was of the belief that he had previously paid extra rent money that was not required as per his tenancy agreement. When asked to clarify what the extra money was that he thought he had paid he stated it was the \$400.00 he was

forced to pay for utilities, when that was not required as per his tenancy agreement, and the \$150.00 increased rent he paid for July and August 2016.

I then asked the Tenant if he truly believed he had made overpayments, then why did he not pay the remaining \$750.00 amount owed for October 2016 rent; as the \$400.00 + \$150.00 + \$150.00 amounts did not add up to \$1,050.00, his previous rent amount? The Tenant responded that he was short of money and could not afford to pay his October 2016 rent.

The Tenant confirmed he had read the information on the 1 Month Notice when he received it in May 2016. He stated he did not file an application for Dispute Resolution sooner to discuss his concerns about paying utilities or the increased rent because he had entered into "a mutual agreement" with the Landlords on May 12, 2016. Upon further clarification the Tenant stated the Landlords were forcing him to leave the property so he agreed to increase the rent and pay the utilities in order to stay living in the rental unit.

Upon review of the 10 Day Notices to end tenancy the Tenant asserted he received only one 10 Day Notice and that was the one issued in September 2016. He argued he did not receive a 10 Day Notice in October 2016. The Tenant submitted that he reduced his rent payment back to \$1,050.00 for September because after he had obtained some information from the Residential Tenancy Branch he was of the opinion he had overpaid his rent and could deduct those amounts from future rent payments. He asserted he was pressured by Landlords into paying utilities and a higher rent so it should not be upheld.

After the hearing was completed, when I was instructing the parties to disconnect from the hearing, the Tenant interrupted and requested further clarification on the possible outcomes of these applications. I explained that if I found in favor of the Tenants, the tenancy would continue to be in full force and effect and all Notices to end tenancy would be cancelled. I continued to explain that if I found in favor of the Landlords the Tenants would have to move out; the Landlords would be issued an Order of Possession effective two days upon service and a Monetary Order. The Tenant interrupted and began to argue that his wife's signature on the written agreement dated June 30, 2016 was forged.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; relevant evidence presented to me; and on a balance of probabilities, I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In the matters before me I favored the Landlords' submissions over the Tenant's submissions as the Landlords' submissions were forthright; consistent; and supported by documentary evidence. The Tenant's submissions were inconsistent and randomly changed throughout his testimony.

The Tenant initially confirmed he had entered into a mutual agreement with the new tenancy terms of increased rent and utilities in order to continue his tenancy, as per the June 30, 2016 written agreement submitted into evidence. Then the Tenant began to argue it was not signed on June 30, 2016, it was signed July 1, 2016. The Tenant later argued he was pressured into signing the document before changing his submissions to say he never agreed to pay increased rent or utilities. It was not until the hearing had been concluded that the Tenant argued his wife's signature was forged on the June 30, 2016 agreement.

I found the Landlords' submissions, which included that: the Tenants became very quiet after serving the 1 Month Notice; the Tenants were quiet during the time the Landlords were showing the rental unit to prospective tenants; and it was not until June 30, 2016 that the Tenant approached them begging to stay in the rental unit; to be reasonable

given the circumstances and documentary evidence presented to me during the hearing.

There is a heavy burden on a Tenant to show that there was duress forcing him into signing an agreement. In this case I conclude the Tenants have not established on a balance of probabilities that there was coercion or duress as to have forced them into signing the June 30, 2016 agreement. At best it can be said that the Landlords threatened to evict them, after service of a proper 1 Month Notice and that they would allow the new tenants to move into the unit if they did not agree to enter into a new two month tenancy. Furthermore, I find that the aforementioned scenario was created by the Tenants' lack of proper action in responding to the 1 Month Notice, leaving the issues until the due date, which is not a defence against enforcement of the terms of an otherwise legal agreement.

I do not accept the Tenant's last minute assertion that his wife's signature was forged onto the June 30, 2016. That being said, even if I had accepted such an argument from his submissions the Tenant admitted to signing the June 30, 2016 agreement; therefore giving the agreement full force and effect.

From the evidence I find the Tenants had been served a valid 1 Month Notice to end the tenancy effective July 1, 2016. I further find that on June 30, 2016 the Landlords and Tenants entered into a written agreement to reinstate the tenancy, changing the terms of the tenancy agreement, pursuant to section 14(2) of the *Act*. As such, I conclude the 1 Month Notice issued May 12, 2016 was mutually waived and was no longer of any force or effect.

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find the terms of the tenancy agreement were changed as per the June 30, 2016 mutual agreement, pursuant to section 14(2) of the *Act*. Those changes included: rent would be payable in the amount of \$1,200.00 per month effective July 1, 2016; the tenancy would be for a fixed term period ending August 31, 2016 at which time the Tenants were required to vacate the rental unit; and the Tenants were required to pay the Landlords the sum of \$550.00 for previously used utilities.

As the parties mutually agreed to the new terms, as supported by the signed written agreement; I find there was insufficient evidence to prove the Tenants were issued an illegal rent increase.

There was no term in the June 30, 2016 written agreement that stipulated the Tenants were required to pay 40% of future utilities. The initial tenancy agreement that was signed by both parties on November 19, 2015 did not require the Tenants to pay for utilities.

As per the June 30, 2016 agreement, I conclude the Tenants were required to pay one lump sum payment of \$550.00 for past utilities and \$1,200.00 on the first of each month for rent effective July 1, 2016. The undisputed evidence was the Tenants made a \$400.00 payment towards the utilities leaving an outstanding balance owed of \$150.00; and the Tenants paid \$1,200.00 for July 2016 and August 2016 rent. Accordingly, I grant the Landlords' application for unpaid utilities in the amount of **\$150.00**, pursuant to section 67 of the *Act*.

Section 44(1)(b) of the *Act* stipulates that the tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Section 44(3) of the *Act* provides that if on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on the above, I find this tenancy initially ended August 31, 2016, the end of the fixed term tenancy, pursuant to section 44(1)(b) of the *Act*. That being said, the Landlords accepted partial payment for rent of \$1,050.00 for September 1, 2016 and took no action to try to obtain an Order of Possession for the rental unit prior to accepting that payment. Accordingly, I find the Landlords and Tenants reinstated the tenancy effective September 1, 2016; once that partial rent payment was accepted by the Landlords.

Notwithstanding that the June 30, 2016 agreement required the Tenants to vacate on August 31, 2016; in absence of a new written tenancy agreement, I find the tenancy was reinstated on the same terms as the June 30, 2016 agreement. As such, the Tenants were required to pay \$1,200.00 rent for September 1, 2016 and October 1, 2016.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A

tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction or authorization from an Arbitrator to make such deductions, as defined by the *Act*.

Upon review of the 10 Day Notice issued September 5, 2015 I find the Notice was issued on the prescribed form and served in accordance with the *Act*. I accept that at the time the 10 Day Notice was received by the Tenants on September 5, 2015; they owed \$150.00 for unpaid rent that was due September 1, 2016. Therefore, the effective date of that Notice was **September 15, 2016**.

Although the 10 Day Notice indicated the Tenants owed \$445.00 for utilities as of September 1, 2016; as stated above I did not find the June 30, 2016 agreement required the Tenants to pay future utilities. Furthermore, I find the amount listed on the 10 Day Notice for utilities does not void the 10 Day Notice issued September 05, 2016.

Overall, there was insufficient evidence before me that would prove the Tenants had a legal right to withhold or reduce their September 1, 2016 rent payment by \$150.00. As such I find the Tenants were in breach of section 26 of the *Act* by failing to pay their full rent of \$1,200.00 on September 1, 2016.

In addition, I accept the Tenants failed to pay the outstanding \$150.00 within five days of receipt of the 10 Day Notice. Therefore, I find there is sufficient evidence to uphold the 10 Day Notice issued September 05, 2016 for the \$150.00 unpaid rent. Accordingly, I grant the Landlords application for an Order of Possession, pursuant to section 55 of the *Act* and a **\$150.00** Monetary Order for unpaid rent, pursuant to section 67 of the *Act*.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

As the 10 Day Notice has been upheld above, I find this tenancy ended **September 15, 2016**, the effective date of that Notice. Therefore, I conclude the Landlords are seeking money for use and occupancy of the unit and not rent for October 2016. The Landlords will not regain possession of the unit until after service of the Order of Possession and are required to mitigate any future losses by working to find a new tenant as soon as possible; therefore, I award the Landlords use and occupancy for the full month of October 2016, in the amount of **\$1,200.00**, pursuant to section 67 of the *Act*. If the Landlords suffer additional loss they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

As per the above, the Tenants are hereby ordered to pay the Landlords the sum of **\$1,600.00** (\$150.00 + \$150.00 + \$1,200.00 + \$100.00) forthwith.

In the event the Tenants do not comply with the above order, the Landlords have been issued a Monetary Order in the amount of **\$1,600.00** which may be enforced through Small Claims Court upon service to the Tenants.

Based on the totality of the evidence before me, I find the Tenants submitted insufficient evidence to prove the merits of their application for Dispute Resolution. Accordingly, the Tenants' application for Dispute Resolution is dismissed in its entirety, without leave to reapply.

Conclusion

The Landlords were successful with their application and were granted an Order of Possession and a \$1,600.00 Monetary Order. The Tenants' application was dismissed in its entirety.

This decision is final, legally 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: October 11, 2016

Residential Tenancy Branch