



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI MNDC O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) under the *Residential Tenancy Act* (the “Act”) by the tenants to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 31, 2016 (the “2 Month Notice”), to dispute an additional rent increase, for a monetary order in the amount of \$11,552.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and other unspecified relief.

The tenants and landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in writing and documentary form, and make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

Neither party raised concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the Application, the most urgent of which is the application to set aside the 2 Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 2 Month Notice and the tenants’ request to dispute an additional rent increase. The balance of the tenants’ application is dismissed, **with leave to re-apply**.

Issues to be Decided

- Has the monthly rent been increased contrary to the *Act*?
- Should the 2 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one year fixed term tenancy began on August 1, 2012 and reverted to a month to month tenancy after July 31, 2013. According to the tenancy agreement, monthly rent of \$1,650.00 less \$60.00 for suite hydro and gas, for a net monthly rent of \$1,590.00 is due on the first day of each month. The landlord assumed this tenancy through the purchase of the property that had a closing date of July 29, 2016.

Firstly, regarding the amount of the monthly rent, the landlord stated that monthly rent should only be discounted when the suite in the home is rent based on a letter from the previous owner who was the original landlord. The tenants stated that there was no discussion at the start of the tenancy that the suite deduction would only be for months when the suite was occupied and that it applied to all months based on the wording of the tenancy agreement. Regarding the Notice of Rent Increase form submitted in evidence, the form is dated July 12, 2016 and indicates that the rent of \$1,590.00 will increase by \$50.00 effective October 1, 2016.

Secondly, regarding the 2 Month Notice, the parties agreed that the landlord served the tenants with a 2 Month Notice dated August 31, 2016, via personal service on the tenants on August 31, 2016. The parties also confirmed that the 2 Month Notice replaced an undated and unsigned 2 Month Notice that was dated August 29, 2016, which the parties were advised was of no force or effect as it did not comply with section 52 of the *Act*. The tenants disputed the 2 Month Notice on August 29, 2016 which all parties agreed was in fact disputing the replacement 2 Month Notice dated August 31, 2016 as the first 2 Month Notice dated August 29, 2016 was not fully completed and was invalid as a result.

The 2 Month Notice states the reason as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenants raised the issue of the 2 Month Notice being issued in bad faith. The tenants submitted two binders in evidence with tabs and had their evidence clearly organized. The landlord submitted in evidence a copy of the 2 Month Notice, a Proof of Service document, a copy of Residential Tenancy Branch Policy Guideline 37- Rent Increases and a one page letter from a realtor.

The landlord testified that he is planning to move into the rental unit as he has had a series of accidents and his employment with the armed forces is ending as a result. The landlord stated that he did not submit any documentary evidence in support of his testimony as it was "classified".

The landlord confirmed that he attempted to raise the tenants' rent by \$400.00 on August 29, 2016 which was the same date as the 2 Month Notice was first issued that was not fully completed, followed by a second 2 Month Notice that was fully completed served two days later on August 31, 2016. The tenants referred to an e-mail submitted in evidence in support of their position of the proposal made by the landlord to increase their rent by \$400.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, regarding the amount of the monthly rent, the landlord stated that monthly rent should only be discounted when the suite in the home is rent based on a letter from the previous owner who was the original landlord. The parties were advised that a letter dated over four years after the written tenancy agreement was formed does not impact the monthly rent as the letter was not an agreement between the parties. In addition, the tenants presented a Notice of Rent Increase form (the "rent increase form") dated July 12, 2016 that did not provide the required three months of notice prior to the effective date of the rent increase, and was higher than the 2.9% maximum rent increase for 2016. The maximum allowable rent increase for the monthly rent of \$1,590.00 for 2016 would have been \$46.11 and not the \$50.00 has listed on the rent increase form. Therefore, I find the rent increase form dated July 12, 2016 is **invalid** as it does not comply with sections 42 and 43 of the *Act*. Therefore, I find the rent increase form is of no force or effect. In addition, I find that the monthly rent remains at \$1,590.00 per month after the taking into account the deduction of \$60.00 each month for suite hydro and gas from the amount of \$1,650.00 per month.

Secondly, there is no dispute that the 2 Month Notice dated August 31, 2016 was disputed by the tenants. When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

The landlord did not dispute that he attempted to have the tenants agree to mutually increase the monthly rent of \$1,590.00 net by \$400.00 on August 29, 2016 and when the tenants refused to agree, he served them with the 2 Month Notice on the same date that was not completed properly, so two days later, the landlord served the tenants with a completed 2 Month dated

August 31, 2016. Given the above, I am unable to find that the 2 Month Notice was issued in good faith. Without making a determination on this issue, it may be just as likely than not that the reason for the 2 Month Notice being issued by the landlord is that he was not successful on obtaining the tenant's agreement to raise the \$1,590.00 net monthly rent by \$400.00. In addition to the above, I also note that the landlord failed to submit documentary evidence to support his position by claiming it was "classified".

Therefore, based on the above, **I cancel** the 2 Month Notice due to insufficient evidence by the landlord and find that the 2 Month Notice was not issued in good faith.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenants' Application was successful, and pursuant to section 72 of the *Act*, **I authorize** the tenants to withhold **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The 2 Month Notice issued by the landlord is cancelled due to insufficient evidence and that the 2 Month Notice was not issued in good faith.

The tenants have been authorized to retain \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

The tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: November 7, 2016

Residential Tenancy Branch