Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNDC OLC RP FF

Preliminary Issues

The Tenants wrote the following in the details of the dispute on their application for Dispute Resolution:

> *(1) 10 day eviction notice was switched from notice to end tenantcy violently.*
> *(2) Section 28 "quiet enjoyment" has been repetedly breached.*
> *(3) Illegally raised our rent to pay for water*
> *(4) Talked to my child about rent due & eviction see attached:*
>
> [Reproduced as written]

Based on the aforementioned I find the Tenants had an oversight or made a clerical error in not selecting the box to request to cancel a Notice to end Tenancy issued for unpaid rent or utilities, as they clearly indicated their intention to dispute the two notices listed in item (1) above. Therefore, I amend the Tenants' application to include the request to cancel the Notices to end Tenancy issued for unpaid rent or utilities, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 5, 2016. The Tenants filed seeking: to dispute an additional rent increase; for money owed or compensation for damage or loss under the *Act,* regulation, and/or tenancy agreement; an order to have the Landlord comply with the *Act,* regulation, and/or tenancy agreement; order the Landlord to make repairs to the unit site or property; recover the filing fee; and to cancel the Notices to end Tenancy issued for unpaid rent or utilities, as amended above.

The hearing was conducted via teleconference and was attended by the Tenants. No one was in attendance on behalf of the Landlord. The Tenants provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on October 6, 2016.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenants, I find that the Landlord was served notice of this hearing in accordance with Section 89(1) (c) of the Act. I further find the Landlord is deemed to have received that notice, pursuant to section 90 of the *Act.* The hearing continued to hear the undisputed evidence of the Tenants in absence of the Landlord.

Issue(s) to be Decided

1. Have the Tenants been issued an additional rent increase in breach of the *Residential Tenancy Act (*the *Act)*?
2. Was there sufficient evidence to uphold the 10 Day Notice issued October 3, 2016?

Background and Evidence

As per the written tenancy agreement submitted into evidence, the parties entered into a month to month tenancy agreement which commenced on November 30, 2012. Rent of $1,000.00 was payable on the first of each month and was subsequently increased to $1,050.00 per month. On November 30, 2012 the Tenants paid $500.00 as the security deposit.

The tenancy agreement stipulates, in part as follows:

> *What is included in the rent: (check only those things that are included and provide additional information, if needed) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent.*
>
> [Reproduced as written p 2 item 3(b)]

The items checked of as being included in rent were: stove and oven; refrigerator; carpets; and window coverings. The rental unit was described as being half of a duplex consisting of two levels (main and basement) with 3 bedrooms and 2 bathrooms. The Tenants both levels of one half of the duplex.

The Tenants testified that the Landlord had postdated cheques for their rent payments ending December 1, 2016. When the male Tenant found out that his employment cheque would be delayed he contacted the Landlord to advise his October 1, 2016 rent cheque would not clear the bank on the first.

On October 3, 2016 the Tenants returned home to find a Notice to end tenancy was posted to their door. That Notice was issued on an RTB-30 form dated (06/2004). Shortly afterwards the Landlord appeared at the rental unit and ripped that Notice away from the Tenant and handed him a new Notice that was issued on a current RTB-30 form.

The Tenants submitted that the Landlord had spoken to their 10 year old daughter and told her that her parents did not have money for rent so they were going to be kicked out. The Tenants asserted their daughter was extremely upset when they returned home a short time later.

The Tenants stated they were advised by the Residential Tenancy Branch (RTB) staff not to have any interactions with their Landlord until after the hearing once they explained the hostilities displayed towards them by the Landlord. As such the Tenants advised the Landlord in their written statement served with their application for Dispute Resolution that the money to cover their October 1, 2016 postdated cheque was in their bank. Their October 2016 rent cheque cleared their bank a few days later. The Tenants' November 1, 2016 cheque cleared the bank on November 1, 2016.

The Tenants argued the Landlord increased their rent in breach of the *Act.* They submitted that they were only given 1 ½ weeks verbal notice that their rent would be increasing to $1,050.00 effective December 1, 2014. They stated they were told their rent would increase because the

municipality installed water meters and the Landlord told them he would not be paying money for their water usage.

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; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Regarding the additional rent increase

Section 41 of the Act stipulates that a landlord must not increase rent except in accordance with this Part. Section 42 of the Act stipulates timing and 3 month notice of rent increases while section 42(3) stipulates that a notice of a rent increase must be in the approved form.

Section 6 (1) of the Schedule in the Regulations provides that once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.

Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations; ordered by the director on an application under subsection; or agreed to by the tenant in writing.

Section 43(5) of the Act stipulates that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The undisputed evidence was that approximately 1 1 /2 weeks before December 1, 2014 rent was due the Tenants were issued a verbal rent increase of $50.00 per month. That rent increase was not issued on the RTB prescribed form and was not issued for the legislated amount of 2.2% for 2014.

While I appreciate that circumstances may change during a long term tenancy, such as changes to the way municipalities manage their utilities, a landlord does not have the authority to unilaterally decide to increase a tenant's rent, above the legislated amount, without being granted an order from an arbitrator.

Therefore, I find the rent increase that was implemented as of December 1, 2014 was invalid. Accordingly, I find the Tenants paid an excess amount of rent for the period of December 1, 2014 to December 1, 2016 totaling **$1,250.00** (25 months x $50.00). As such the Tenants are entitled to recover the excess payment amount, pursuant to section 43(5) of the *Act.*

Regarding the two Notices to end tenancy

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends. When a tenant files an application to dispute that Notice the burden to prove rent remained unpaid falls upon the landlord.

In this case, in absence of the Landlord, I accept the undisputed evidence that the Tenants paid their rent when they notified the Landlord in their October 6, 2016 registered mail that the rent money was in their bank account, as the Landlord had their postdated cheque. Accordingly, I find there was insufficient evidence before me to uphold the two Notices to end tenancy. As such, both Notices issued October 3, 2016 are hereby cancelled and are of no force or effect.

Filing fee and monetary order

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

The Landlord is hereby ordered to pay the Tenants the sum of **$1,350.00** ($1,250.00 + $100.00) forthwith.

The Tenant has been issued a Monetary Order for **$1,350.00.** This Order must be served upon the Landlord and may be enforced through Small Claims Court. The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is $1,350.00.

Conclusion

The Tenants were primarily successful with their application and were awarded $1,350.00. The 2 Notices to end tenancy issued October 3, 2016 were cancelled and the balance of the Tenants' application was dismissed with leave to reapply.

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: November 28, 2016

Residential Tenancy Branch