



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, CNC, OLC, RP, LRE, AAT, O

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 31, 2016 ("2 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 2 Month Notice, pursuant to section 49;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 13, 2016 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an order to allow access to or from the rental unit for the tenants, pursuant to section 70; and
- other unspecified remedies.

The landlord did not attend this hearing, which lasted approximately 37 minutes. The tenant, BO ("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 she had permission to speak on behalf of her daughter, "tenant CO," the other tenant named in this application, as an agent at this hearing.

The tenant testified that she served the landlord with the tenants' application for dispute resolution hearing package ("Application") on October 18, 2016, by way of registered mail. The tenants provided a Canada Post receipt and tracking number with their application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord

was deemed served with the tenants' Application on October 23, 2016, five days after its registered mailing.

The tenant confirmed that she served the landlord with the amendment to the tenants' application on November 23, 2016, by sliding a copy under the landlord's garage door. I advised the tenant that because the landlord did not attend this hearing to confirm service and she did not serve the landlord according to section 89 of the *Act*, I could not consider the amendment at this hearing. I notified the tenant that the tenants would be required to file a new application for dispute resolution at the Residential Tenancy Branch ("RTB") in order to pursue their claims for more time to cancel the 2 Month Notice and to cancel the 2 Month Notice and that these portions were dismissed with leave to reapply. I notified the tenant that the application to cancel the 2 Month Notice was time-sensitive and leave to reapply did not extend any applicable limitation period. The tenant confirmed that she understood it was an urgent matter and she would attend at the RTB office to file a new application in person on the date of this hearing, December 7, 2016. I advised the tenant that I could only deal with the remainder of the tenants' application at this hearing.

The tenant testified that she personally received the landlord's 1 Month Notice on October 13, 2016. The effective move-out date on the notice is November 30, 2016. 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 October 13, 2016.

Issues 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 comply with the *Act*, *Regulation* or tenancy agreement?

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

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to an order to allow access to or from the rental unit for the tenants?

Are the tenants entitled to other unspecified remedies?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on July 1, 2016 for a fixed term of one year. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed on August 31, 2016 by the tenants but a copy was not provided to them by the landlord. The tenants continue to reside in the rental unit.

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 October 13, 2016, 2016 and filed their Application on October 17, 2016. Accordingly, I find that the tenants' application was 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. The landlord did not meet his onus of proof. Therefore, as advised to the tenant during the hearing, the landlord's 1 Month Notice, dated October 13, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy will continue until it is ended in accordance with the *Act*.

Repairs

I order the landlord to perform the following repairs at the rental unit within 21 days of the receipt of this decision, based on the tenant's undisputed testimony:

1. install towel racks in the bathrooms, as there is no place to put towels or other clothing;
2. install a plug in the bathtub;
 - a. there is currently a hole in this area where a metal piece is sticking out and the tenants are using a cup to block this area;
 - b. the tenant advised that the landlord took this plug to fix it and never returned it;

3. return the sink to proper, working order in the ensuite bathroom of the master bedroom;
 - a. the tenant advised that there is no water supply to the bathroom sink because it has been turned off since the landlord attempted to make repairs under the sink;
4. clean the backyard and remove the landlord's items including buried items, wood, a laundry sink, and building materials, as these items are hazardous particularly to the tenant's children who play in the backyard.

Access

I order the landlord to provide the tenants with access to the following areas on the rental property immediately upon receipt of this decision, based on the tenant's undisputed testimony:

1. the breaker room, which is currently locked with a deadbolt, in order to reset the breaker in the event of an emergency;
2. the shed in the backyard, which is currently locked, in order for the tenants to use and access their personal belongings being stored there;
3. the backyard, which the tenant says is for the tenants' use only.

I order the landlord to immediately abide by section 29 of the *Act* and provide the tenants with at least 24 hours' written notice prior to entering the rental unit. The tenant claimed that the landlord entered her rental unit sometime at the end of November or the beginning of December 2016, without written notice and without permission from the tenants.

I order the landlord to provide the tenants with a copy of the signed, written tenancy agreement within 21 days of the receipt of this decision.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated October 13, 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 perform the above repairs at the rental unit and provide the tenants with access to the above areas at the rental property. If either party fails to comply with the above orders or the parties require clarification or resolution of the above terms, both parties have leave to reapply at the RTB for dispute resolution.

I order the landlord to immediately comply with section 29 of the *Act*, prior to entering the rental unit.

I order the landlord to provide the tenants with a copy of the signed, written tenancy agreement within 21 days of the receipt of this decision.

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: December 19, 2016

Residential Tenancy Branch