



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Wolstoncroft
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MT OLC FF SS O

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy for landlord's use and an extension of time to apply to dispute the notice, as well as for an order that the landlord comply with the Act, regulation or tenancy, an order for substituted service and recovery of their filing fee. Two tenants and a witness for the tenants participated in the teleconference hearing, but the landlord did not.

The tenant submitted evidence to establish that the landlord was served with the application for dispute resolution and notice of hearing by registered mail sent on December 21, 2016. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the landlord was deemed served with notice of the hearing on December 26, 2016, and I proceeded with the hearing in the absence of the landlord.

Preliminary Issues

Extension of Time to Apply to Dispute Notice to End Tenancy

The tenants applied to cancel a notice to end tenancy for landlord's use dated November 25, 2016. The tenants indicated in their application that they received the notice on December 9, 2016. The tenants made their application to dispute the notice on December 16, 2016. The landlord did not appear in the hearing to provide evidence of the service of the notice to end tenancy. I therefore found that the tenants made their application to dispute the notice within the required time frame, and it was not

necessary for me to consider whether to grant the tenants an extension of time to dispute the notice.

Notice to End Tenancy

When a tenant applies to cancel a notice to end tenancy, the landlord has the burden of proof to establish the validity of the notice. As the landlord did not attend the hearing, the tenants appeared and were ready to proceed, I cancelled the notice to end tenancy dated November 26, 2016. The tenancy continues until such time as it ends under the Act.

Substituted Service

The tenants did not provide any evidence to indicate that they needed an order for substituted service, and I therefore did not consider this portion of their application.

Issue(s) to be Decided

Should I order the landlord to comply with the Act, regulation or tenancy agreement?
Are the tenants entitled to recovery of their filing fee?

Background and Evidence

The tenancy began on November 1, 2012, with monthly rent of \$1,500.00. Section 3(b) of the tenancy agreement sets out the services or facilities included in the rent, Four of those items are “storage,” “parking for all vehicles,” “large shop,” and “all other outbuildings and areas.”

The tenants stated that problems began when the rental property was sold and the new owner became their landlord. The parties did not sign a new tenancy agreement. The tenants stated that the landlord told them he was going to rent out a couple of spots on the property, and then another tenant began living on the property and the landlord required the tenants to pay \$1,700.00 in monthly rent. The landlord did not serve the tenants with a notice of rent increase.

The tenants and their witness described how on July 1, 2016 the landlord's wife physically assaulted the tenants' guest and tried to force her way into the rental unit. The tenants also described how the landlord has used a key to come into the rental unit without notice or permission.

Analysis

I find that in this case it is appropriate for me to order the landlord to comply with the Act, regulation or tenancy agreement, as follows:

1. the landlord must comply with the terms of the written tenancy agreement, particularly:
 - a. the monthly rent remains at \$1,500.00 until such time as the landlord gives proper notice of a rent increase; and
 - b. the landlord may not reduce the size of the rental property or remove any of the services or facilities indicated in the tenancy agreement without compensating the tenants through a reduction in rent, and the landlord may not remove any service or facility that is a material term of the tenancy agreement; and
2. the landlord must comply with section 29 of the Act, regarding restrictions on the landlord's right to enter the rental unit or property.

If the landlord fails to comply with these orders, it is open to the tenants to apply for monetary compensation.

Because the tenants' application is successful, they are entitled to recovery of the \$100.00 filing fee.

Under section 43(5) of the Act, the tenants may recover any overpayment of rent by deducting it from their upcoming rent.

Conclusion

The notice to end tenancy dated November 26, 2016 is cancelled.

The landlord must comply with the orders set out above. If the landlord does not comply, it is open to the tenants to apply for monetary compensation.

The tenants are entitled to recovery of their filing fee and they may therefore deduct \$100.00 from their next month's rent.

The monthly rent remains at \$1,500.00. The tenants are entitled to recover any overpayment of rent by deducting the overpayment from upcoming rent. For example, if the tenants paid the landlord \$1,700.00 per month for three months, they would be entitled to deduct \$600.00 from their next month's rent. If the overpayment exceeds \$1,400.00 (\$1,500.00 less deduction of \$100.00 for the filing fee), the tenants may

withhold all rent for one month, and deduct the remainder of overpayment from the following month(s) of rent.

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: January 26, 2017

Residential Tenancy Branch