



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR CNC DRI LA MNDC OLC PSF RP FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated December 25, 2016, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on January 5, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order cancelling a notice to end tenancy for cause;
- an order cancelling a rent increase;
- an order authorizing the Tenants to change the locks on the rental unit;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation and/or the tenancy agreement;
- an order that the Landlord provide services of facilities agreed upon but not provided;
- an order that the Landlord return the Tenants' personal property;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on her own behalf and was assisted by M.G, who provided interpretation when necessary. J.G. was also present with the Landlord but did not provide oral testimony. All parties giving evidence provided a solemn affirmation.

On behalf of the Tenants, K.S. testified that the Tenants' Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on December 30, 2016. The Landlord acknowledged receipt of the Tenants' Application package.

In addition, K.S. testified that the Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on January 5, 2017 (the "Amendment"), was served on the Landlord by Xpresspost. Although unable to confirm the date these documents were served, K.S. stated they were served in accordance with the Rules of Procedure. The Landlord confirmed receipt of the Amendment.

No further issues were raised with respect the documents provided by the Tenants. The parties were in attendance and were ready to proceed. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

A number of orders are being sought by the Tenants, as summarized above. Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address at this hearing are the 1 Month Notice to End Tenancy for Cause, dated December 30, 2016 (the "1 Month Notice") and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 2, 2017 (the "10 Day Notice"). Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' Application to cancel the 1 Month Notice and the 10 Day Notice, with leave to reapply for the remainder of the relief sought at a later date.

Background and Evidence

The parties testified as to the terms of the tenancy agreement between them. The tenancy began on April 1, 2015. Rent in the amount of \$650.00 per month is due on the first day of each month.

The 1 Month Notice. The Landlord testified the Tenants play music loud all day. In addition, the Landlord stated she suffers from stress and diabetes, and has a young child at home. Accordingly, the Landlord issued the 1 Month Notice. Although no reason for ending the tenancy was indicated, the Landlord provided written details as follows: "I have newborn baby at home Tenancy put loud volume speaker on all day." According to the Landlord, the 1 Month Notice was served by posting a copy to the Tenants' door on December 30, 2016.

In reply, K.S. acknowledged receipt of the 1 Month Notice on December 30, 2016. However, she stated the Tenants do not play loud music all day. In support, the Tenants provided employment letters confirming both Tenants work full-time during normal business hours.

The 10 Day Notice. The Landlord testified rent in the amount of \$650.00 was not paid when due on January 1, 2017. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenants by posting a copy to the Tenants' door on January 2, 2017

In reply, K.S. acknowledged receipt of the 10 Day Notice on January 2, 2017. However, she testified the Tenants did pay rent in cash on January 2, 2017, at 3:00 p.m. According to K.S., the parties' usual practice is for the Tenants to take their own receipt book for the Landlord to

complete when they pay rent. However, K.S. testified that the Landlord accepted the rent but refused to provide her with a receipt, suggesting these actions were done in support of ending the tenancy on this basis. In support, the Tenants submitted into evidence a copy of a Money Mart receipt, dated January 2, 2017, with a time signature showing the transaction occurred at 2:37 p.m. This document was tendered as proof that the Tenants cashed a cheque so they could pay rent, and proceeded to do so roughly 23 minutes later. In addition, the Tenants provided a signed statement completed by G.N. confirming payment of rent as claimed by K.S.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The 10 Day Notice. Section 46 of the *Act* permits a landlord to end a tenancy when rent remains unpaid on any day after the date they are due by issuing a notice to end tenancy. On receipt of a notice to end tenancy under this section, a tenant has five days to either pay rent in full or dispute the notice to end tenancy by filing an application for dispute resolution.

In this case, the Landlord testified the Tenant did not pay rent when due on January 1, 2017. Accordingly, the Landlord served the Tenants with the 10 Day Notice, which I find was received on January 2, 2017. The Tenants disputed the 10 Day Notice in time by filing and serving the Amendment on January 5, 2017.

However, I find there is insufficient evidence before me to conclude the Tenants did not pay rent when due on January 1, 2017. Rather, the Tenants provided oral testimony and documentary evidence, which I accept, confirming they paid rent on January 2, 2017, after cashing a cheque at Money Mart. Accordingly, the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The 1 Month Notice. Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. In this case, the Landlord issued the 1 Month Notice, which I find was received by the Tenants on January 2, 2017. The Tenants disputed the 1 Month Notice in time by filing and serving the Amendment on January 5, 2017.

The Landlord testified the reason for wanting to end the tenancy was that the Tenants play music too loud, and referred to stress and diabetes. The Tenants provided oral and documentary evidence that they both work during normal business hours and therefore cannot play music all day as alleged.

I find there is insufficient evidence before me to conclude that the Tenants significantly interfered with or unreasonably disturbed the Landlord, which appeared to be the underlying basis for issuing the 1 Month Notice. Accordingly, the 1 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment.

Conclusion

The 1 Month Notice and the 10 Day Notice are cancelled. The tenancy will continue unless otherwise ended in accordance with the *Act*.

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 24, 2017

Residential Tenancy Branch