



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNR MNDC MNR O RR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenants' application for:

- Cancellation of the Landlord's 1 Month Notice to End Tenancy For Cause ("1 Month Notice") pursuant to section 47 of the *Act*;
- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid rent or utilities ("10 Day Notice") pursuant to section 46 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act*;
- an order for the rent to be reduced for services agreed upon but not provided pursuant to section 65 of the *Act*; and
- other unspecified orders.

Tenant A.K.B., (the "tenant") attended the hearing on behalf of the tenants. The landlord was also present for the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant explained that the tenants had been served by the landlord with both a 1 Month Notice and a 10 Day Notice. The tenant acknowledged receiving a 1 Month Notice in person on April 28, 2017. Pursuant to section 88 of the *Act* the tenants are found to have been served with this notice on the same day as its service.

The tenant testified that on May 12, 2017 he served the landlord in person with the tenants' application for dispute resolution. The landlord acknowledged receipt of this document on May 12, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been served with this application for dispute resolution on the same day as its service.

On May 12, 2017 the landlord served the tenants in person with a 10 Day Notice. The tenant acknowledged receipt of this 10 Day Notice on the day of its service. Pursuant to

section 88 of the *Act* the tenants are found to have been served with the landlord's 10 Day Notice on May 12, 2017.

On May 15, 2017 the tenants amended their application for dispute resolution to reflect the 10 Day Notice served to them on May 12, 2017.

At the outset of the hearing, the tenant explained that he wished to withdraw all applications for a monetary award pursuant to section 67 of the *Act*. The tenant stated that he wished to only pursue the portions of the tenants' application related to the notices to end tenancy and the rent reduction. Pursuant to section 64(1)(c), I amend the tenants' application to withdraw the portions of the application related to a monetary award under section 67 of the *Act*.

Issue(s) to be Decided

Can the tenants cancel the landlord's 1 Month Notice? If not, is the landlord entitled to an order of possession?

Can the tenants cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an order of possession?

Can the tenants reduce the rent for services agreed upon but not provided?

Background and Evidence

The tenant explained that on June 15, 2015 he, tenant B.A.P, along with two others entered into a tenancy agreement with landlord, I.G. Rent was \$2,000.00 per month and a security deposit of \$1,000.00 was collected at the outset of the tenancy. In approximately May or June 2016, landlord I.G. sold the property to landlord, R.D. No tenancy agreement was entered into between the new landlord and the tenants. The tenant stated that he believes that landlord R.D., now has possession of his security deposit.

On April 28, 2017 the tenants were issued a 1 Month Notice to End Tenancy for Cause. This is a two-page document with the second page containing an area designated for the landlord to cite the reason why a 1 Month Notice is served on a tenant. In the 1 Month Notice submitted to the hearing as part of the tenants' evidentiary package this area remains blank. In the section of the 1 Month Notice marked 'Details of Cause' the landlord has written, "landlord move in the property." When asked about this, the

landlord explained that he served the tenants with this 1 Month Notice because he wanted to move into the rental unit.

On May 12, 2017 the tenants were served by the landlord with at 10 Day Notice for unpaid rent. The 10 Day Notice indicated that rent of \$6,100.00 remained outstanding. The landlord testified that rent was in fact \$2,500.00 per month, not \$2,000.00, and that rent had therefore, not been paid in full for the past 11 months. Furthermore, the landlord explained that the tenants were late in paying \$600.00 due for May 2017 rent.

The tenant denied that the parties had any agreement to pay rent of \$2,500.00 in rent and explained that the landlord had agreed to accept this late payment of rent for May 2017.

In addition to an application seeking to cancel the notices to end tenancy, the tenants are seeking a one- time reduction in rent of \$336.79. This amount is in reflection of a heating unit that required emergency repairs in January 2017. The tenant stated that during the middle of the evening in January 2017, the furnace stopped working. The tenant testified that he phoned the landlord three times in an effort to have him repair heater; however, he was unable to contact the landlord. The tenant said that he took matters into his own hands, and arranged for a repair person to attend to the property to fix the heating unit.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the 1 Month Notice entered into written evidence and the landlord's sworn testimony describing the document served on the tenant, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*. This section states:

52 In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the landlord served the tenants with a 1 Month Notice that fails to state the grounds for ending the tenancy. The landlord testified that he issued the 1 Month Notice because he wanted to occupy the property. This is not a reason for ending a tenancy pursuant to a 1 Month Notice. I therefore find that the 1 Month Notice issued to the tenants to be invalid and find that it fails to comply with section 52 of the *Act*. The tenants are successful in their application cancelling the landlord's 1 Month Notice.

In addition to the 1 Month Notice, the landlord has served the tenants with a 10 Day Notice. Testimony was provided by the landlord that the tenants have failed to pay \$6,100.00 in rent. The tenants deny this and explained that they landlord is simply trying to charge them more rent than what was agreed upon.

I find insufficient evidence was presented at the hearing by the landlord demonstrating that any amount of money remains outstanding, that rent was ever paid late, or that the tenants agreed to pay \$2,500.00 in rent per month. The landlord provided no documentation to show that there was an agreement that rent was \$2,500.00/month, additionally he accepted \$2,000.00/month for many months without complaint. No information was provided by the landlord explaining when rent was due, making it impossible determine when rent was to be considered "late." As the landlord has failed to demonstrate a sound basis for ending the tenancy in accordance with the provisions of section 46 of the *Act*, I find that the tenants are successful in their application cancelling the landlord's 10 Day Notice.

In addition to an application seeking to cancel the landlord's notices to end tenancy, the tenants have applied for a rent reduction pursuant to section 65 of the *Act*. This section notes, "If the director finds that a landlord has not complied with the *Act*, the regulations or a tenancy agreement, the director may make...orders that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director." The tenant explained that in January 2017 he was forced to make emergency repairs to the heating system after it stopped working. These repairs were performed and the tenant was given an invoice of \$336.79 by the heating repair

company. Section 33(5) of the *Act* explains that, “A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.” Section 33(1)(c)(iii) notes that emergency repairs include repairs made for the purpose of repairing the primary heating system.

I find that pursuant to section 33(5) of the *Act* that the tenants are entitled to recover the amount that he has been invoiced by the heating repair company, as the work performed is considered an emergency repair. The tenants may withhold \$336.79 from a future rent payment, pursuant to section 65 of the *Act*.

Conclusion

The tenants were successful in cancelling the landlord's 1 Month Notice dated April 28, 2017 and the landlord's 10 Day Notice dated May 12, 2017. These notices are of no force or effect and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenants were successful in their application for a reduction in rent. The tenants may withhold \$336.79 from a future rent payment on one occasion.

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: June 21, 2017

Residential Tenancy Branch