



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, ERP, FF, OLC, FSF, RP

Introduction

This hearing was convened to deal with an application by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for an order cancelling a 1 Month Notice to End Tenancy for Cause dated April 20, 2017 (the “1 Month Notice”) and an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2017 (the “10 Day Notice”). The tenants also sought an order that the landlord comply with the Act, regulations, or tenancy agreement pursuant to s. 62(3), an order that the landlord make repairs pursuant to s. 32 and an order that the landlord provide services or facilities required by law pursuant to s. 62(3). Lastly, the tenants sought recovery of the application filing fee.

Both of the tenants attended the hearing and had full opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence.

At the outset of the hearing the tenants advised that the landlord has brought her own application and that a hearing of that application is scheduled for early July, 2017. The file number for the landlord's application is set out on the cover page of this decision. The tenants also advised that they received a letter from the landlord yesterday stating that she wished to withdraw her application scheduled for early July. That letter was not in the materials from the landlord that were before me. The tenants were advised that as the landlord was not at today's hearing, the landlord's application could not be dealt with today, as her consent would be required.

The tenants also advised that the letter they received yesterday indicated that the landlord withdrew the 1 Month Notice. The tenants further stated that the landlord had sent them an earlier letter confirming that there was no basis for the 10 Day Notice. This letter was not before me either.

As the landlord did not attend, service of the tenants' application, amended application, and notice of hearing was considered. The tenants testified that they served the landlord with these materials by registered mail sent on May 5, 2017. A copy of a Canada Post registered mail receipt was in evidence. Based on the tenants' affirmed testimony and the receipt in evidence I am satisfied that the landlord was served in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the tenants entitled to orders that the landlord comply with the Act, regulation, or tenancy agreement, make repairs, or provide services required by law?

Are the tenants entitled to recover the application filing fee?

Background and Evidence

A copy of the tenancy agreement was in evidence. The tenants also testified as to its terms. The tenancy began in 2010. The agreement was originally between the tenants and the landlord's now ex-husband. The landlord has since assumed the rights and responsibilities under the tenancy agreement. Rent is currently \$1,850.00 monthly and due on the first of each month. A security deposit of \$850.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The 1 Month Notice was served on the tenants on April 25, 2017 and they applied to dispute it the same day. The 10 Day Notice was served on the tenants on May 2, 2017 and again the tenants applied to dispute it the same day.

As set out above the tenants understand that the landlord has withdrawn both the 10 Day Notice and the 1 Month Notice. However, there is no confirmation of that from the landlord before me.

The tenants believe that the landlord's notices to end tenancy were prompted by their unwillingness to agree to a significant rent increase. Included in the tenants' evidence is an email from the landlord dated May 4, 2017 urging the tenants to reconsider their

position on a proposed \$400.00 per month rent increase. In that email the landlord states that if the tenants do not agree, she will be applying to the Residential Tenancy Branch for permission to increase the rent by \$700.00 monthly, and that if her application is not successful, she will be moving a family member into the suite or selling the property.

The tenants testified that the two smoke detectors in their rental unit have been removed because they were not functioning, and that they are currently without smoke detectors. They asked that I order the landlord to install functional smoke detectors in the unit.

The tenants also stated that the landlord has installed a "woodpecker box" on the building on a wall that close to the bedroom and that the woodpecker's noise is disruptive to their sleep.

Analysis

The landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the 1 Month Notice. The landlord also has the burden of establishing that rent and/or utilities are outstanding under the 10 Day Notice. The landlord did not attend the hearing and did not present any evidence or make any submissions in support of either the 1 Month Notice or the 10 Day Notice.

Therefore, I grant the tenants' application to cancel the both the 1 Month Notice and the 10 Day Notice. The tenancy will continue until legally ended in accordance with the Act.

The tenants have provided undisputed evidence that the landlord asked them to agree to a rent increase outside of the allowable annual increase under the Act and that they are unwilling to agree to the increase. Section 43 of the Act provides that the landlord may impose a rent increase *only* up to the amount that is (a) calculated in accordance with the regulation; (b) ordered by the Residential Tenancy Branch; or (c) agreed to by the tenant in writing. Currently the allowable rent increase for 2017 is 3.7%.

The landlord is cautioned that, absent an agreement by the tenants, she may only increase the rent beyond the prescribed amount by making an application to the Residential Tenancy Branch. I will not order the landlord to comply with the Act in this regard as she appears to now understand that she may bring an application to the Residential Tenancy Branch for a rent increase.

The landlord is further cautioned that a tenancy may only be ended in accordance with the Act. Again, I will not order the landlord to comply with the Act as she appears to understand the circumstances under which a tenancy may be legally ended.

The tenants also provided undisputed evidence that their rental unit does not have functioning smoke detectors. I find that working smoke detectors are necessary and that by failing to provide them the landlord is in breach of her obligation under s. 32(1)(a) of the Act to provide and maintain a residential property in a state of repair that is compliant with the safety standards required by law. I therefore order the landlord to comply with the Act by immediately installing functioning smoke detectors in the rental unit. If the landlord fails to do so the tenants may apply for a monetary order against the landlord for the cost to have these installed by a professional, certified electrician.

Lastly, the tenants provided undisputed evidence that the location of a woodpecker box close to their bedroom is disruptive to them. I find that the location of the woodpecker box is in breach of the tenants' right to quiet enjoyment of the rental unit pursuant to s. 28(b). Accordingly, I order the landlord to relocate or remove the woodpecker box from its current location within one week of receipt of this decision. Again, if the landlord fails to do so the tenants may apply for monetary compensation for loss of quiet enjoyment of the rental unit.

As the tenants were successful in their application they are entitled to recover the filing fee. I authorize the tenants to make a one-time deduction of \$100.00 from a future month's rent in full satisfaction of this award.

Conclusion

The tenants' application to cancel the 1 Month Notice and the 10 Day Notice is successful. Both notices are void and of no effect.

The landlord is cautioned that rent increases above the legislated limits must be approved by the Residential Tenancy Branch or consented to in writing by the tenants.

The landlord is further cautioned that a tenancy may be ended only in accordance with the Act.

The landlord is ordered to immediately install functional smoke detectors in the rental unit.

The landlord is further ordered to relocate or remove the woodpecker box within a week of receipt of this decision.

As the tenants' application is successful, they are authorized to recover the \$100.00 application filing fee by deducting that amount from their rental payment on a one-time basis.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 08, 2017

Residential Tenancy Branch