



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPR-DR OPC
CNC MNDC, OLC FFT CNR

Introduction

This hearing was convened by way of conference call concerning applications made by one landlord and by two tenants. One landlord has applied as against two tenants by way of the Direct Request process for an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The tenants' application names two landlords and seeks an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application. The applications have been joined to be heard together.

One landlord and both tenants attended the hearing and all parties gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

The landlord has not applied for an Order of Possession for cause, and the tenants have not disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. However, I find that the parties are aware of the applications and intent of such applications, and because the applications have been joined to be heard together, I amend the tenants' application to include an application to cancel all notices to end the tenancy, and the landlord's application to add an application for an Order of Possession for cause.

Issue(s) to be Decided

- Has the landlord established that any of the notices to end the tenancy were given in accordance with the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord(s) for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of wages?
- Should the landlord(s) be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to enter into a written tenancy agreement with the tenants?

Background and Evidence

The first tenant (TC) testified that this month-to-month tenancy began on June 24, 2017 and he still resides in the rental unit, however the other tenant has vacated. Rent in the amount of \$600.00 per month is payable on the 1st day of each month and there are no rental arrears. The landlords did not collect a security deposit or a pet damage deposit, and no written tenancy agreement exists. The rental unit is a manufactured home on a foundation on a private lot, not in a manufactured home park. The landlord does not reside on the property.

The tenants have provided a copy of the first page only of a One Month Notice to End Tenancy for Cause served by the landlords. It is dated October 2, 2017 and contains an effective date of vacancy of November 1, 2017, and names two landlords and two tenants. The tenant testified that it was received on October 2, 2017, and only received the first page. Later, the tenant received a "Correction" removing the name of one of the landlords.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants have provided a copy of the first page of the notice and it is dated November 2, 2017 and contains an effective date of vacancy of November 14, 2017 for unpaid rent in the amount of \$650.00 that was due on November 1, 2017. It names both tenants and the landlord who attended this hearing. The tenant testified that only one page of the two-page notice was received.

The tenant also testified that on October 28, 2017 he left a bank draft on the table of the rental unit for the rent because the landlord had scheduled an inspection. The bank draft was in the amount of \$600.00 and made out to one of the landlords named in the One Month Notice to End Tenancy for Cause. However, the landlord didn't take it because it was payable to her mother.

The landlord also served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017 with an effective date of vacancy of December 14, 2017 for unpaid rent in the amount of \$90.00 that was due on December 1, 2017. The tenant testified that he received two pages of the notice, however only the first page has been provided as evidence for this hearing by the tenants.

The tenant held back \$40.00 of the rent because the tenant bought a stove element for \$46.00 and didn't charge the landlord anything to install it. The tenant paid \$560.00 for December's rent on November 25, 2017 and gave the landlord a receipt for the cost of the element with the rent cheque deducting only \$40.00.

Due to the amount of time missed at work dealing with the landlord and the tenancy, the tenants claim \$1,000.00.

The tenants also seek an order that the landlord comply with the *Residential Tenancy Act* by entering into a written tenancy agreement with the tenants and an order that the landlord complete an inspection report with the tenants.

The tenant further testified that the tenants have not done anything wrong and paid rent in the amount agreed only deducting the \$40.00 cost for the stove element.

The second tenant (TG) testified that the tenants actually moved in on June 24, 2017 and due to difficulties with the landlord, the tenant moved out on November 19, 2017, but the other tenant still resides in the rental unit. Rent was \$600.00 per month payable on the 1st day of each month, and the landlord did not charge anything for the first 6 days in June. The tenant discussed a written tenancy agreement with the landlord around the beginning of November, 2017 and the landlord was going to talk to the other tenant about it, but that never happened.

The tenant also testified that she cleaned the entire place, and the landlord agreed that July's rent would be \$500.00. In August, 2017 the tenants paid \$600.00, as well as September, October and November, 2017. The landlord had asked the tenant to drop off rent for October on October 2, 2017 and when the tenant arrived, the landlord gave the tenant the One Month Notice to End Tenancy for Cause. The tenant didn't know why; no problems had been discussed. The tenant called the landlord who said it was for being late with the rent.

The landlord testified that she purchased the property with her mother. The tenants started to move their items into the rental unit on June 21, 2017 and attempted to have the tenants enter into a written tenancy agreement. The landlord has provided text messages exchanged between the parties.

The landlord had an agreement with the tenants that they would live in the rental unit at a reduced rent and were to make improvements to the rental unit to increase the value of it long-term. It had previously been rented for \$800.00 per month. When negotiating rent, the tenants agreed to \$650.00 per month for the first year and \$700.00 per month after that. Copies of text messages exchanged between the parties have been provided as evidence for this hearing, as well as text messages exchanged between the landlord and a witness confirming the amount of \$650.00 per month.

After the One Month Notice to End Tenancy for Cause was served on October 2, 2017, the landlord sent a Correction to the tenants removing the name of the landlord's mother as a landlord. The landlord believes that the bank draft made payable to the landlord's mother was in retaliation to the One Month Notice to End Tenancy for Cause.

The landlord issued the One Month Notice to End Tenancy for Cause due to damages caused by the tenants. The landlord had paid for fence posts, and the tenants have removed them, as well as

an entire wall on the greenhouse and installed a sliding glass door. They also removed a cupboard in the rental unit which has damaged the ceiling. The landlord was never contacted about structural changes.

The landlord also called police after finding marijuana growing on the property, and the police said the tenants had to cut the plants down, which they did. The landlord has been too afraid to return, finding the tenant to be intimidating.

The tenants are currently in arrears of rent the sum of \$390.00, being \$50.00 per month from July to January. They only ever paid \$600.00 per month, and deducted \$40.00 to repair the oven, which the landlord wasn't told about until the rent was paid. Although it wasn't agreed, the landlord is willing to forgive the \$40.00 deduction.

The landlord served two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities by posting both pages to the door of the rental unit on November 2 and December 2, 2017 respectively. The landlord has provided a photograph of the November 2, 2017 notice posted to a door showing that another page is attached but is not visible. Both pages have been provided by the landlord as evidence for this hearing, and the landlord testified those are copies of the notice posted.

Analysis

Firstly, I am satisfied that the landlord who attended this hearing (JG) is the landlord, and the tenants' application with respect to the other landlord named in the tenants' application (RN) is dismissed in its entirety.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The *Act* also requires a landlord to serve the approved form of notice.

The One Month Notice to End Tenancy for Cause was issued first. No one has provided a copy of the second page, and therefore I cannot be satisfied that the notice given to the tenants was in the approved form. Therefore I cancel it.

The landlord has provided both pages of the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The landlord testified that the tenants agreed to \$650.00 per month for the first year and \$700.00 per month after that, which is contrary to the *Residential Tenancy Act*. The landlord also testified that the tenants only ever paid \$600.00 per month. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2017 states that the tenants failed to pay rent in the amount of \$650.00 that was due on November 1, 2017. According to the landlord, that's one month's rent, and if the tenants were to pay \$650.00 per month, the tenants

would have been in arrears more than that as of November 1, 2017, considering the tenants started to pay rent in July, 2017. In the absence of a signed tenancy agreement, the only corroborating evidence is text messages. The text from the landlord's witness is believable however any conversations could have taken place between the parties in the absence of that witness later. The landlord obviously accepted the amount of \$600.00 per month for July, August, September, and October, 2017.

I have reviewed all of the evidentiary material of both parties. The tenants have provided a receipt dated December 1, 2017 in the amount of \$560.00 for December's rent, and the parties agree that \$40.00 was deducted by the tenant for a repair to the stove. Although the landlord did not agree to that in advance, the landlord is not claiming that now as unpaid rent. However, where a landlord collects rent after the effective date of a notice to end a tenancy, the landlord must give the tenant some indication, in writing that the money is being received for use and occupancy only and does not serve to reinstate the tenancy. The landlord has not done so in this case, and therefore has, in effect, reinstated the tenancy and I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2017.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017 is for unpaid rent in the amount of \$90.00 that was due on December 1, 2017, which comprises of the \$40.00 deduction made by the tenant for the stove part, and \$50.00 for not paying \$650.00 for December's rent. Since the landlord has forgiven the \$40.00 deduction, and having found that rent is \$600.00 per month, I also cancel the December 2, 2017 notice.

The tenants have not provided any evidence to substantiate the claim for loss of wages, and I find that the amount of \$1,000.00 is a guess at best. I am also not satisfied that the landlord should be ordered to pay compensation to the tenants due to any failure of the landlord to comply with the *Act*, regulation or tenancy agreement, and I dismiss the tenants' application for a monetary order.

The parties had some sort of agreement with respect to repairs. I caution both parties that such agreements must be separate from rent or a security deposit. I order the parties to enter into a written tenancy agreement for a month-to-month tenancy to commence on July 1, 2017 for rent in the amount of \$600.00 per month. If the parties fail to do so, this Decision will form a written tenancy agreement, but the landlord may not now collect a security deposit from the tenants.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in that amount. I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the tenants' application as against the landlord (RN) is hereby dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause dated October 2, 2017 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2017 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017 is hereby cancelled, and the tenancy continues.

I hereby order the parties to enter into a written tenancy agreement for a tenancy to start on July 1, 2017 on a month-to-month basis for rent in the amount of \$600.00 per month, or this Decision will form a part of a tenancy agreement between the parties.

I hereby grant a monetary order in favour of the tenants as against the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 12, 2018

Residential Tenancy Branch