



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR OLC FF

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause dated October 3, 2017 ("1 Month Notice"), a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 3, 2017 ("10 Day Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to recover the cost of the filing fee and based on the details of dispute, to restore cable services and to remove a broken fridge from the rental property.

Tenant M.H. ("tenant"), a translator for the tenant, the landlord and a translator for the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the landlord provided the rental unit as address his service address on the 1 Month Notice and 10 Day Notice, I find the landlord was sufficiently served with all documents as claimed by the tenant. Neither party raised any concerns regarding the documentary evidence presented.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that no rent or utilities were owed as of the date of the hearing and as a result, the landlord was withdrawing the 10 Day Notice. Therefore, I find there was no need to address the 10 Day Notice further.

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should any orders be made in relation to the restoration of cable services or a broken fridge on the rental property?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A month to month tenancy agreement began September 15, 2014. A copy of the tenancy agreement was submitted in evidence. Current monthly rent is \$1,410.00 per month and is due on the first day of each month. The landlord neglected to include a service address on the tenancy agreement contrary to the *Act* which will be dealt with later in this decision.

The tenant confirmed that they received the 1 Month Notice dated October 3, 2017 on October 11, 2017 by personal service which the landlord also confirmed. The 1 Month Notice includes an effective vacancy date of November 12, 2017 which would automatically correct to November 21, 2017 under section 53 of the *Act*. The tenants disputed the 1 Month Notice on October 12, 2017 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following reasons on the 1 Month Notice:

1. The tenant is repeatedly late paying rent.
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
3. The tenant has not done required repairs of damage to the unit/site.

Regarding reason #1 listed above, the landlord listed four dates between January 2017 and October 2017 when the landlord claims the tenants were late paying rent, however, the tenant stated that no instructions or service address were provided by the landlord for the tenants to pay the rent. As a result, the landlord's service address was confirmed during the hearing which has been included on the cover page of this decision for ease of reference. The parties were ordered going forward that all rent payments will be made by post-dated cheque mailed by the tenants to the landlord at the service address on the cover page of this decision.

Regarding reason #2 listed above, the landlord claims that the tenants have garbage outside of the rental unit and make unreasonable noise; however failed to submit any photo evidence of the alleged garbage or sound recordings of the alleged noise. While the landlord referred to two witness letters from the same person "O", I afford both letters very little weight as both letters were not dated and contained no contact information; which I find results in the witness being unable to be cross-examined during the hearing.

Regarding reason #3, the landlord claims that the tenants have failed to make required repairs but admitted that no written request for repairs has been made to the tenants or submitted in evidence.

The tenants deny that they caused any of the three causes alleged.

The tenant stated that the landlord shut off their cable service on October 11, 2017 and as of the date of the hearing on January 3, 2018, the tenants do not have cable service. The landlord claims that cable was only shut off on December 10, 2017 and was reconnected December 11, 2017. There is no dispute that the tenancy agreement includes cable service in the monthly rent.

There is also no dispute that a broken fridge remains outside of the rental unit which I will address below.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding reason #1 listed above, I find the landlord has failed to provide sufficient evidence that the tenants paid rent late as the landlord has provided no service address for payments by the tenants until the date of this hearing. Therefore, I find the landlord

has failed to meet the burden of proof for repeated late payment of rent and I make the following order.

I ORDER the tenants to provide post-dated cheques to the service address of the landlord listed on the cover page of this decision for the remainder of the tenancy to avoid any confusion about the payment of rent.

Regarding reason #2 listed above, the landlord claims that the tenants have garbage outside of the rental unit and make unreasonable noise; however I find the landlord has failed to provide sufficient evidence to prove these allegations. At the very least I would expect photos of garbage which the landlord failed to provide. Furthermore, I find the letters to be insufficient as they are not dated, lacked detail regarding specific dates and that the witness was not available to be cross-examined during the hearing. Therefore, I find the landlord has failed to provide sufficient evidence for reason two.

Regarding reason #3, the landlord claims that the tenants have failed to make required repairs but admitted that no written request for repairs has been made to the tenants or submitted in evidence. Therefore, I find the landlord has provided insufficient evidence of any requests for repairs to the rental unit and that at the very least, the landlord must put those requests in writing as proof that such a request was made, including the date the request was made and reasonable time frame in which repairs are to be made.

Based on the above, **I cancel** the 1 Month Notice as I find the landlord has failed to provide sufficient evidence to prove any of the three causes alleged in the 1 Month Notice.

I ORDER the tenancy to continue until ended in accordance with the *Act* pursuant to section 62(3) of the *Act*.

Regarding cable service, as there is no dispute that cable service is included in the monthly rent as part of the tenancy agreement, I make the following order:

I ORDER the landlord to inspect and repair as necessary the cable service to ensure it is reconnected and functioning no later than **January 12, 2018**. This will be at the landlord's expense, if any. This order is made pursuant to section 62(3) of the *Act*.

There is also no dispute that a broken fridge remains outside of the rental unit which I will address below. I find that this is the responsibility of the landlord based on Policy Guideline 1. Therefore I make the following order.

I ORDER the landlord to remove the broken fridge outside of the rental unit no later than **January 12, 2018**. This will be at the landlord's expense, if any. The tenant agrees to ensure that access to the broken fridge is clear immediately. This order is made pursuant to section 62(3) of the *Act*.

I also find that the landlord has breached section 13 of the *Act* which states:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) **A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:**

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) **the address for service and telephone number of the landlord or the landlord's agent;**
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[My emphasis added]

As a result, **I ORDER** the landlord to comply with section 13 of the *Act* in the future.

As the tenants' application was successful, I grant the tenants **\$100.00** pursuant to section 72 of the *Act*. **I authorize** the tenants a one-time rent reduction in the amount of **\$100.00** from February 2018 rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenants' application is successful.

The 1 Month Notice has been cancelled due to insufficient evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

I have also made the following orders:

I ORDER the landlord to inspect and repair as necessary the cable service to ensure it is reconnected and functioning no later than January 12, 2018. This will be at the landlord's expense, if any.

I ORDER the landlord to remove the broken fridge outside of the rental unit no later than January 12, 2018. This will be at the landlord's expense, if any. The tenant agrees to ensure that access to the broken fridge is clear immediately.

The landlord has also been ordered to comply with section 13 of the *Act* in the future.

The tenants have been granted \$100.00 pursuant to section 72 of the *Act* and have been authorized a one-time rent reduction in the amount of \$100.00 from February 2018 rent in full satisfaction of the recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 3, 2018

Residential Tenancy Branch