



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes

For the landlord: OPR MNR
For the tenants: CNR CNC MNDC RP O

Introduction

This hearing involved both a Review Hearing and a cross-application of the landlord's application which normally would not be joined to a Review Hearing matter. As a result, this decision will include both a decision on the Review Hearing and an original decision on the landlord's application which distinguishes this decision from a typical Review Hearing decision. In other words, I will deal with both the tenant's original application which has been suspended pending the outcome of this Review Hearing, and the landlord's joined application. Both applications are for dispute resolution under the *Residential Tenancy Act* (the "Act").

In addition to the above, an amendment was permitted by the Residential Tenancy Branch ("RTB") to allow the tenant to dispute both a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). As a result, this decision will also deal with those matters as well.

The landlords have applied for an order of possession based on a 10 Day Notice and for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenant has applied to cancel a 10 Day Notice, 1 Month Notice, for compensation related to rats and insects under the *Act*, for repairs to the unit, site or property, and other unspecified relief.

The tenant and the landlords 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.

The landlords presented two witnesses and the tenant presented one witness. I do not find there were any proven service issues related to evidence.

Preliminary and Procedural Matter

On March 2, 2018, the hearing was reconvened to address a request for a correction submitted by the tenant regarding the total amount owed by the landlord which has been addressed below by way of a correction. As a result a strikethrough has been placed through the corrected text and replaced with bolded and underlined text.

Issues to be Decided

- For the Review Hearing, should the original decision be upheld, set aside or varied?
- Should the 10 Day Notice and 1 Month Notice be cancelled?
- Is the landlord entitled to any monetary compensation for unpaid rent or utilities, and if so, how much?
- Is the tenant entitled to any monetary compensation under the *Act*, and if so, how much?

Background and Evidence

A month to month tenancy began on May 1, 2015. The tenant originally paid \$650.00 per month in rent and currently pays \$674.05 in monthly rent.

10 Day Notice – as the landlord was unprepared regarding the 10 Day Notice during the hearing, the 10 Day Notice was set aside during the hearing and as a result, I find the 10 Day Notice is of no force or effect.

1 Month Notice – The tenant confirmed receiving the 1 Month Notice dated June 29, 2017 on June 29, 2017, with an effective vacancy date of August 31, 2017. The tenant disputed the 1 Month Notice on July 4, 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 or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord presented D.S. as a witness who claims she has been disturbed due to banging on the ceiling but was unable to provide specific dates or examples and provided vague testimony. D.S. also claims that the tenant causes her anxiety but failed to indicate how in detail. D.S. also claimed that she is 80 years old and is afraid for her safety however could not indicate why other than to state that the tenant is continuously annoying her but failed to provide details to support her allegation. D.S. also stated that she hardly does laundry due to the tenant and when asked if she has ever been approached by the tenant when doing laundry, she confirmed that she has not been approached by the tenant. D.S. also confirmed that the tenant has never threatened her in any way.

D.S. states that the illegal activity the tenant is involved in is fraud as he claimed he would be getting money from the landlord which D.S. stated she does not feel he is entitled to. On cross-examination, the tenant asked D.S. if she signed the March 20th letter that the tenant sent to the landlord to which D.S. stated she could not remember. The tenant pointed out that D.S. in fact had signed the letter in support of his March 20th letter to the landlord regarding rats.

The tenant claims that both eviction notices were in retaliation of having applied against the landlord for monetary compensation due to the impact the rats and insects have had on the tenant.

Tenant's claim – The tenant has applied for monetary compensation due to a loss of quiet enjoyment due to rats and insects inside the rental unit. In the original hearing, the tenant was awarded \$80.00 per month for a loss of quiet enjoyment from March 2016 (when the tenant first reported the rat issue to the landlord) through May 2017 for a total of \$1,120.00 which was 14 months x \$80.00. The tenant was also permitted to withhold all of one month's rent and a portion of another month's rent in full satisfaction of that award.

In the matter before me, the landlord claims that on April 16, 2016 was the first time bait boxes were placed at the rental unit and that entry points were sealed shortly after however notes were not taken so a date on that aspect was not available.

The tenant claims that those points of entry were reopened by the rats and that a plastic window screen didn't work as the rats chewed through it and that a follow up letter was sent to the landlord in September. The landlord claims that she did not hear from the tenant between April and September 29, 2016. The tenant admitted that he did not know the entry points were being compromised and on September 30, 2016 the landlord responded to the tenant and on October 3, 2016 a work order was created to fill the bait boxes. The landlord also provided another work order in evidence dated November 17, 2016 where the bait boxes were refilled however the landlord stated that they did not consider going into the rental unit. The landlord stated the next work order was in January 2017.

On March 6, 2017 a text indicates that the landlord was advised of rats and the landlord responded April 24 with another work order to refill the bait boxes and on May 3, 2017 a hole was seen in a vent and that a patch was required. The landlord confirmed that they have not been writing down dates to track the rats issue.

Analysis

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

10 Day Notice – As indicated above, the 10 Day Notice was cancelled as the landlord was unprepared regarding the 10 Day Notice. I find the 10 Day Notice is of no force or effect as a result. As a result, I also find the landlord has failed to provide sufficient evidence of money owed as claimed so the landlord's monetary claim is also dismissed without leave to reapply.

1 Month Notice - 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 1 Month Notice is valid, the 1 Month 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.

I find the landlord's witness D.S. to have provided vague testimony and that the landlord has failed to provide sufficient evidence to support the two grounds listed on the 1 Month Notice. As a result, I cancel the 1 Month Notice due to insufficient evidence, without leave to reapply. The tenancy shall continue until ended in accordance with the Act.

Tenant's claim for compensation – Firstly, I set aside the original decision dated May 29, 2017 as that decision was based on the landlord not appearing and at the Review Hearing the landlords did attend and presented evidence.

Having fully considered all of the evidence presented, I find that the landlord has provided insufficient evidence that they properly responded in a timely and effective manner to the tenant's rat and insect concerns. Specifically, when a bait box is 100% empty, I find that is a reasonable and obvious sign of a rat problem, yet the landlord provided insufficient evidence to address that rat problem other than to show based on work orders that in fact every time the bait boxes were checked they were completely empty. Therefore, I find that the tenant is entitled to the same compensation the previous arbitrator ordered so I grant the tenant the same award of \$80.00 per month for a total of 14 months which is **\$1,120.00**; however, I also note that this amount **\$650.00** has already been withheld by the tenant **for July 2017 rent which the parties both confirmed** and may not be withheld again so no additional compensation is granted beyond that amount **and as a result I grant the tenant a monetary order pursuant to section 67 of the Act for the balance owed by the landlord to the tenant in the amount of \$470.00**. I do not grant any additional compensation as there is insufficient evidence before me that there is currently a rat problem or insect problem as of the time of this hearing.

Any previous repair orders are of no force or effect as I find there was insufficient evidence presented regarding an order for repairs.

Conclusion

The 10 Day Notice and 1 Month Notice are both cancelled and are of no force or effect.

The landlord's monetary claim is dismissed due to insufficient evidence.

The tenancy shall continue until ended in accordance with the Act.

As indicated above, the tenant has been granted \$1,120.00 in compensation **and that due to the tenant already withholding \$650.00 for July 2017 rent, I grant the tenant the balance owing by the landlord to the tenant in the amount of \$470.00.** ~~which I find is the same amount as he was already granted and since he has already withheld that amount, I do not grant any monetary order or any additional compensation.~~

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: December 11, 2017

Residential Tenancy Branch

Correction Dated: March 2, 2018

Residential Tenancy Branch