



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, DRI, OLC, PSF, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- an order regarding the tenant's dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I waited until 9:55 a.m. in order to enable the landlords to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant gave undisputed affirmed testimony that they personally served each landlord with the Application and their evidence in the presence of a witness on January 07, 2018. In accordance with sections 88 and 89 of the *Act*, I find the landlords were duly served with the Application and evidence.

The tenant testified that they received the Two Month Notice on December 31, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the Two Month Notice.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order to the landlords to make emergency repairs to the rental unit?

Is the tenant entitled to an order regarding an additional rent increase by the landlords?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlords to provide services or facilities required by law?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to authorization to recover the filing fee for this application from the landlords?

Background and Evidence

Written evidence was provided that this tenancy commenced on October 01, 2015, with a monthly rent of \$700.00, due on the first day of each month. The tenant confirmed that a security deposit in the amount of \$350.00 was paid to the landlords. The tenancy agreement states that water, electricity, heat, cablevision and laundry (twice a month) is included in the monthly rent.

A copy of the landlords' signed December 31, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by March 01, 2018, the landlords cited the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

In addition to the above, the tenant also entered into written evidence:

- a copy of a letter outlining the tenant's submissions and details of the tenancy in which the tenant states that the landlord is not respecting the tenant's right to quiet enjoyment of the rental unit;
- a copy of a 'Notice to Tenants' stating that, of the services the landlord currently provides including internet, cable TV, laundry and heating, the landlords will no longer be providing cable TV and internet service effective as of January 01, 2018;
- a copy of a Notice of Rent Increase form showing the monthly rent increasing from \$700.00 to \$750.00 effective as of February 01, 2017;
- a copy of a letter from the tenant to the landlords regarding the dispute of an additional rent increase for 2017 as well as complaining about fridges by the entrance of the rental unit blocking air flow in the rental unit;
- a copy of a letter from the tenant to the landlords dated October 01, 2017, stating that the allowable rent increase effective as of January 2017 at 3.7% is \$725.90 in contrast to the rent increase of \$750.00 given by the landlords. The letter also states that the allowable rent increase effective as of January 2018 is \$754.94 based on the allowable rent increase for 2017. Finally, the letter states that the tenant has overpaid the monthly rent by \$238.72 for the year of 2017 and is entitled to a refund;
- a copy of the tenant's bank statement showing that the tenant has been paying \$750.00 a month for the monthly rent in 2017; and
- a copy of a Notice of Rent Increase form showing the monthly rent increasing from \$777.75 to \$808.86 effective as of January 01, 2018.

The tenant questioned the good faith of the Two Month Notice served to him and submitted that the landlords do not intend to live in the rental unit.

The tenant testified that they have over paid the monthly rent for the year of 2017 as the landlord gave a notice of rent increase in the amount of \$50.00 effective as of February 01, 2017. The tenant stated that the allowable rent increase for 2017 is 3.7% and that

based on a rent of \$700.00, the tenant should have only been paying an additional \$25.90 effective as of February 01, 2017. The tenant requested compensation for the overpayment.

The tenant also submitted that he has been recently denied the laundry facilities agreed to in the tenancy agreement as well as being given notice that the landlord is removing internet services and cable TV services which have also been agreed to in their tenancy agreement.

Finally, the tenant stated that the landlord is blocking air flow by having two large fridges by the entrance of the rental unit and has opened the tenant's confidential mail.

Analysis

Two Month Notice

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit and provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notices were issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on January 05, 2018, and since I have found that the Two Month Notice was served to the tenant on December 31, 2017, I find the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

Because the landlords did not attend the hearing to present any evidence that they issued the Two Month Notice in good faith, I find the landlords have failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the Two Month Notice.

The Two Month Notice dated December 31, 2017, is set aside and of no force or effect.

Dispute additional rent increase and compensation for damage or loss under the Act, regulation or tenancy agreement.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find the tenant bears the burden to prove that they incurred a loss and that this loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulations* or tenancy agreement.

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form at least 3 months before the effective date of the increase and by an amount calculated in accordance with the regulations. The allowable rent increase for 2017 is 3.7%. The allowable rent increase for 2018 is 4.0%.

Based on the evidence, affirmed testimony and the above I find the tenant was paying the monthly rent in the amount of \$700.00 and that the maximum allowable rent increase for the rental unit in 2017 at 3.7% was \$25.90 which would bring the total monthly rent payable as of February 01, 2017, equal to \$725.90. As the landlord has given a Notice of Rent Increase form to increase the rent to \$750.00 effective as of February 01, 2017, I find that this rent increase is in violation of the *Act*, the regulations

and the tenancy agreement and that the tenant has proven they suffered a verifiable loss as a result of this illegal rent increase.

Although the landlord has indicated on the Notice of Rent Increase form that a portion of the rent increase was for services provided to the tenant, I find that these services are already included in the rent as per the Tenant's Notice and the tenancy agreement. Section 14 (2) of the *Act* only allows for a tenancy agreement to be changed if the landlord and the tenant agree to the amendment.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. For the above reasons I find the tenant is entitled to a monetary award in the amount of \$265.10, $((\$750.00 - \$725.90 = \$24.10) \times 11 \text{ months (February 2017 to December 2017)})$, the amount of rent that the tenant has paid in 2017 which is in violation of the *Act*.

Pursuant to section 42 (1) (b) of the *Act*, I find that the Notice of Rent Increase dated September 11, 2017, and effective as of January 01, 2018, is not effective until February 01, 2018, 12 months after the previous rent increase that was effective as of February 01, 2017.

I further find that the current monthly rent payable from February 01, 2017, to February 01, 2018, is \$725.90 and that the maximum allowable rent increase for the rental unit in 2018 at 4.0% is \$29.04 which would bring the total monthly rent payable effective as of February 01, 2018, equal to \$754.94. As the landlord has given a Notice of Rent Increase form to increase the rent to \$808.86 effective as of January 01, 2018, I find that this rent increase is in violation of the *Act*, the regulations and the tenancy agreement.

Section 43 (5) of the *Act* states that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant is successful in their Application to dispute additional rent increases and for compensation or loss under the *Act*, *Regulations* and tenancy agreement

Provide services or facilities required by the tenancy agreement or law

I find the tenant bears the burden to prove that the landlord is not providing services or facilities required by the tenancy agreement or law.

Section 27 of the *Act* stipulates that a landlord may terminate or restrict a service or facility if it is not essential to the tenant's use of the rental unit as living accommodation. Section 27 (2) of the *Act* further stipulates that if a landlord terminates or restricts a service or facility they must give the tenant 30 days written notice, in the approved form, and reduce the rent in an amount that is equivalent to the reduction in value of the tenancy agreement.

I have reviewed the documentary evidence and I find that cable TV, the internet and laundry are not essential services to the tenant's use of the rental unit; however I find that the landlord has agreed to these services in the tenancy agreement as a part of the monthly rent.

A landlord may restrict or terminate these services if they give the tenant adequate notice on the approved form and reduce the amount of the monthly rent payable by the tenant in an equivalent amount to the value of those services in accordance with section 27 of the *Act*.

I find that the 'Tenant Notice' that was provided to the tenants regarding the termination of services is not on the approved form and that the landlord has not given the tenant adequate notice regarding the termination of services provided.

For the above reason I **order** the landlord to provide the services agreed to under their tenancy agreement until adequate notice is given on the approved form for their termination or restriction and the rent is reduced in the appropriate amount.

Comply with the Act

Section 62(3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies. When a party makes a claim for the landlord to comply with the *Act*, the burden of proof lies with the applicant to establish the claim.

I find the tenant has established that the landlord has not been complying with the *Act* regarding notices being given to increase the rent or terminating or restricting services.

I **order** the landlord to comply with the Act for any future notices given to the tenant.

I find that the tenant has not sufficiently proven that the landlord has opened the tenant's confidential mail, has disturbed the tenant's quiet enjoyment of the rental unit or that there are fridges blocking air flow into the rental unit and accordingly I will not issue any order regarding these items; however, If true then the landlord should rectify these situations in a timely fashion or the tenant will be at liberty to make another application.

Emergency Repairs

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I find the tenant has indicated on their Application that the window blind is torn. I further find that this repair is not an emergency repair as defined by section 33 of the *Act* and the tenant's Application for emergency repairs to be completed is dismissed, without leave to reapply.

As the tenant has been successful in this application to dispute a Two Month Notice and to dispute additional rent increases, I allow them to recover their \$100.00 filing fee from the landlords

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Conclusion

The Two Month Notice dated December 31, 2017, is cancelled and of no force or effect.

This tenancy continues until ended in accordance with the *Act*.

I **order** that the current monthly rent for the rental unit is \$754.94, effective as of February 01, 2018.

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$365.10 for recovery of rent paid in violation of the *Act* and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and the landlords must be served with **this Order** as soon as possible. Should

the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I note that section 72 of the Act states that if an arbitrator orders a landlord to pay any amount to the tenant, the amount may be deducted from any rent due to the landlord.

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: March 20, 2018

Residential Tenancy Branch