



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, AAT, MNDC, OLC, RR, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order allowing guest access to the rental unit - Section 70
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord’s compliance - Section 62;
5. An Order for a rent reduction - Section 65; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Parties confirm that the Tenants are living in a basement suite in the Landlord’s house. The Tenants agree that the application should be amended to add “basement” to the dispute address.

Issue(s) to be Decided

Is the notice to end tenancy valid or are the Tenants entitled to its cancellation?

Are the Tenants allowed guests?

Is the Landlord out of compliance with the Act?

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to a rent reduction?

Background and Evidence

The tenancy started on October 14, 2017. Rent of \$1,250.00 is payable on the 14th day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. On February 23, 2018 the Landlord served the Tenants in person with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice carries an effective date of May 13, 2018 and the stated purpose of the Notice is that the Landlord or a close family member of the Landlord intends in good faith to occupy the unit.

The Landlord states that their daughter will be moving into the unit upon her return on June 10, 2018 from out of country. The Landlord states that the daughter was both working and studying while out of country. The Landlord states that the Tenants have paid full rent for the period May 14 to June 13, 2018 and if the Notice is found to be valid the Landlord seeks an order of possession for June 13, 2018.

The Tenant states that the Landlord is ending the tenancy because the Landlord does not like the Tenants. The Tenant states that the Landlord threatened the Tenants in the past that if the Tenants did not comply with the Landlord's wishes the Landlord would end the tenancy. The Tenants state that the Landlord also initially informed the Tenants that they would not extend the tenancy past a trial period of 3 months. The Tenants state that they were aware that the Landlord could end the tenancy this way. The Tenants state that one Landlord also informed the Tenants that they wanted the house back and that the Tenants were stressing out the Landlord. The Tenants believe that the Landlords are using their daughter as an excuse to end the tenancy. The Tenants state that the Landlord's evidence is not sufficient as the Landlords did not provide any affidavits or other supporting evidence of their daughter's intention to move into the unit. The Tenant provides video evidence of an interaction between one of the Tenants and one of the Landlords.

The Tenants state that the Landlord was restricting their guests and that originally the Tenants were not allowed guests of any kind. The Tenants state that the Landlord has told the Tenants that they must have the Landlord's permission for guests. The Tenants want an order stopping the Landlord from restricting guests. The Landlord agrees that originally the Tenants were told that they could not have overnight guests other than family. The Landlord states that it understands that guests cannot be unreasonably restricted and that the Landlord has not done so for some time now.

The Tenants state that the Landlord refuses to allow the Tenants to collect their mail from the mailbox and that the Landlord goes through their mail before delivering it to a common area, sometimes late. The Landlord agrees to leave the Tenants mail in the mail box and to allow the Tenants to collect their mail from the mailbox themselves.

The Tenants state that from the onset of the tenancy the kitchen faucet leaked. The Tenants state that the Landlord was informed immediately and that the Landlord attended on a couple of occasions to just "fiddle" with the faucet but never repairing it completely. The Tenants state that the Landlord finally repaired the faucet on February 18, 2018. The Tenants state that the Landlord left a small pan under the sink to collect the leaks and that the Tenants had to empty the pan every 1 to 3 days. The Tenants state that they also had to clean the area under the sink due to over splashes from the small container. The Tenants state that this was more than a mere convenience and that on at least one occasion the Tenant missed her bus to work from having to empty the container. The Tenants claim compensation of \$50.00 per month for a total of \$250.00. The Landlord does not dispute that there was a leak, that the Landlord attempted to adjust the faucet to correct the leak, that the adjustments did not resolve the problem permanently and that the faucet was replaced in February 2018. The Landlord argues that the Tenants are seeking an excessive amount for a minor inconvenience.

The Parties agree that the tenancy agreement provides for cable and internet with the rent. The Tenants state that the Landlord charged them an extra \$5.00 per month for October, November, and December 2017 and for January and February 2018 for the use of a cable box and a flat fee of \$5.00 for a remote that was missing buttons. The Tenants state that since February the Landlord has not asked for any further payments on the cable box. The Tenants claim \$30.00 in total. The Landlord does not dispute returning the Tenants \$25.00 and states that he does not agree to \$30.00 as no amount was collected in the first month of the tenancy. The Tenant describes giving the other Landlord \$5.00 in change during the first month. the Landlord states that it stopped collecting the monthly charge as it became too much of a hassle.

Analysis

Section 49(3) of the Act provides that a landlord may end a tenancy where, inter alia, the landlord is an individual and the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Tenants' evidence strongly supports that the Landlords are not happy with the Tenants and that the Landlord wants to end the tenancy for this reason. The Landlord did not dispute this evidence of dissatisfaction with the Tenants. The Landlord's evidence is that their daughter is moving into the unit however the Landlord provided no supporting evidence from their daughter. It also appears from the Tenant's video evidence that the Landlord is not happy with the Tenants pursuing their rights in relation to the leak and the Landlord appears not to have a full understanding of their obligations as Landlords. I consider overall that the Landlord does not want to end the tenancy for the sake of their daughter but rather to cease having the Tenants in their house. As such I find on a balance of probabilities that the Landlords do not have a good faith intention for ending the tenancy for the reason stated and I find therefore that the Notice is not valid. The Notice is cancelled and the tenancy continues.

Section 30(1)(b) of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that

tenant. Given the Landlord's evidence that the Tenants were not allowed overnight guests unless it was family I find that the Landlord did breach the Act. Given the Landlord's stated understanding that the Tenants are able to invite guests into their home without the Landlord's permission I accept that the Landlord will no longer unreasonably restrict the Tenants from having guests and that the Tenants do not require the Landlord's permission to have guests. I therefore dismiss the claim for an order for the Landlord's compliance however should the Landlord unreasonably restrict the Tenants from having guests in the future the Tenants have leave to reapply for compensation.

Given the Landlord's agreement to leave the Tenants' mail in the mailbox I accept that the Landlord will act as agreed and I therefore dismiss the Tenant's claim for an order for the Landlord's compliance. Should the Landlord fail to allow the Tenants access to their own mail as agreed the Tenants have leave to reapply for compensation.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the undisputed evidence that the tenancy agreement provides for the cable and internet to be supplied to the Tenants with the rent and considering that the provision of cable would necessarily require the provision of a cable box and remote to enable access to the cable, and as the Tenants paid more for their ability to access the cable I find that the Tenants are entitled to compensation of that amount. Given the Tenant's detailed description of the first payment I find that the Tenants did pay \$30.00 more than was required and that the Tenants are therefore entitled to the compensation claimed of **\$30.00**.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Based on the undisputed

evidence of a leak under the sink from the faucet I find that the leak required repair. While I do not consider the leak an emergency as it was not a major leak in a pipe I do consider that the Tenants' enjoyment of the unit was reduced by having the leak and having to maintain the container collecting the leak. Based on the undisputed evidence that the Landlord did not make a lasting repair to the leak for five months, I find that the Landlord was negligent and that the Tenants are therefore entitled to compensation. While emptying a container on occasion could be seen as a minor inconvenience given the Tenant's undisputed evidence that the container required emptying and the area required cleaning at least 10 times each month for five months I find that the Tenants were more than faced with a minor inconvenience and are therefore entitled to the claimed compensation of **\$250.00**.

As the Tenants have been successful with their claims I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$380.00**. The Tenants may deduct this amount from future rent payable.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$380.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 24, 2018

Residential Tenancy Branch