



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement. The Tenants also request an order for payment of the filing fee.

The Landlord, as well as the two adult Tenants were present for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

The Tenants’ situation has changed since initially filing this Application and they required the Application to be amended to include compensation for the Landlord’s failure to comply with the tenancy agreement in the sum of \$30.00 per month for two months for not being able to use an upstairs bathroom. As the parties were both present and in a position to respond to this claim, I proceeded to hear evidence from both parties regarding the use of the areas described.

Issues to be Decided

Are the Tenants entitled to an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement, pursuant to section 62 of the Residential Tenancy Act, (“Act”) and/or to compensation for failure to comply?

Are the Tenants entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The Tenant states that she moved into the basement suite back in 2004 and that her husband moved in some years later. The Tenant explained that the ownership of the house had changed over the years, and that the present Landlord currently resides upstairs in the house. The Tenant became pregnant with her daughter 11 years ago and at that time this Landlord agreed to rent the second basement bedroom for an additional \$100.00 per month. There was a verbal

agreement in place for the use of an extra upstairs bathroom for bathing the new child, with supervision; an additional \$30/month was paid to cover the use of this bathroom and bathtub. The Tenants then had a second child, a son, seven years ago. The Tenants explained that the daughter uses the second basement bedroom and has a trundle bed, which their son sometimes uses; other times, he sleeps in the parent's room, in a separate bed located there. The laundry room and yard are shared areas with the Landlord. Photographs were provided by the Landlord showing the parent's bedroom and laundry area, which confirm the Tenants' testimony.

The Tenants state that in early May 2018, they were served with a Notice to End Tenancy for Unreasonable Number of Occupants, effective August 31, 2018. The Landlord states that she felt uncomfortable with the fact that there were four people living in the basement suite and that "soon there will be four adults there"; the current rent is \$775.00 and this includes the utilities. She states that the square footage is only 568 square feet, which the Tenants dispute. She provided a copy of the National Occupancy Standards developed by CMHC into evidence, and argued that the basement suite is now overcrowded. She had assumed the Tenants would have found more suitable accommodations when the youngest child was school age, and she claims she has subsidized the family for years, with the Tenant being a stay-at-home mother. The Landlord also indicated that she was very uncomfortable that the daughter was being supervised at bath time at her age; the Tenants responded by stating that the daughter is only 10 and that they accompany her upstairs and wait outside the bathroom door because she has a fear of the Landlord's dogs.

The Tenants state that they sought information from the Residential Tenancy Branch and advised the Landlord in writing that her notice was invalid and not of the proper form. This Application was filed May 7, 2018, to dispute the Notice and address the issues of non-compliance. They said that the Landlord left a message in the laundry room the following day that effectively stated they could no longer use the upstairs bathroom and after that, the Tenants felt very uncomfortable and unable to use the shared areas including the yard, or have any guests over, for fear of what the Landlord might do. They describe the current relationship with their Landlord as "toxic" and that their children feel very unwelcome. They felt obliged to seek alternate living accommodations and on May 31, 2018, gave their notice to vacate the end of June, 2018. They have been slowly moving their items over throughout the month of June. The Tenants ask that the Landlord provides a formal apology for having forced them from their home of 14 years, for a rent rebate of \$30.00 per month for May and June for having lost the use of the common space and bathroom and for their \$100.00 filing fee.

Analysis

Under section 62(3) of the Act, there is authority to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord comply with the Act, regulations or tenancy agreement. Section 67 of the Act allows an order that a party pay compensation to another party for losses resulting from non-compliance with the Act.

I find that there was an agreement between the parties for the Tenants to use the upstairs bathroom to bathe their children, and their evidence that this included an additional \$30.00 monthly charge was not disputed. I further find that the Landlord was not entitled to unilaterally withdraw the use of that area while continuing to collect the full rent amount. Accordingly, the Tenants are entitled to compensation for the sudden restriction on the use of the upstairs bathroom and I award them **\$60.00** to cover the months of May and June.

The Tenants argue that the reasons for terminating the tenancy are contrary to the legislation and ask for an Order requiring the Landlord to comply with the Act. The Landlord argues that the current living arrangement is contrary to Occupational Housing Standards published by the CHMC. I have reviewed the standards which the Landlord relied upon in terminating the tenancy. However, I find that the requirements under the *Residential Tenancy Act* are what govern my decisions, and not suggestions on occupancy published by CMHC for other purposes. The sharing of the bedrooms and the use of the space for a family of four was not, in my view, unreasonable. Furthermore, the Landlord had allowed this family of four to live in the basement suite for seven years, and only now decided to evict the family on the basis of an *unreasonable number of occupants*. I find that the Landlord did not comply with the Act in serving the Notice to End Tenancy for this reason, and that the form did not comply with section 52 of the Act. Nevertheless, the Tenants have now ended the tenancy effective June 30th and I am not in a position to compel the Landlord to provide a formal apology, despite my finding that the Landlord was not in compliance with the Act.

I find that the Tenants were successful in their Application and I award the filing fee of **\$100.00**.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenants' copy of this Decision.

Conclusion

I hereby grant an Order for payment of \$160.00 to the Tenants from the Landlord forthwith.

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: June 20, 2018

Residential Tenancy Branch