



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT CNR DRI FFT MNDCT OLC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 10 Day Notice to End Tenancy given for Unpaid Rent and Utilities ("10 Day Notice") pursuant to section 46 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- to dispute an additional rent increase pursuant to section 43 of the *Act*;
- for a monetary award pursuant to section 67 of the *Act*;
- to allow the tenants access to the rental unit pursuant to section 30; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenants and the landlord attended the hearing by way of conference call. Tenant T.M. spoke on behalf of the tenants, while the landlord was represented at the hearing by agent, B.F. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenants confirmed receipt of the 10 Day Notice to End Tenancy issued on May 2, 2018. Both parties confirmed receipt of each other's evidentiary package and the landlord confirmed receipt of the tenants' application for dispute. I find that all parties were duly served in accordance with the *Act*.

Preliminary Issue – Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The landlord agreed to withdrawn the 10 Day Notice issued to the tenants on May 2, 2018.
2. The tenants agreed to pay the landlord a monetary award of \$75.00.
3. The tenants agreed to withdraw all aspects of their application for dispute, save for their application for an Order directing the landlord to comply with the *Act*
4. Both parties acknowledged that this settlement agreement constituted a final and binding resolution of the tenants' applications before me today and does not prejudice any future applications that may be brought by either party.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of the tenant's dispute

Issue(s) to be Decided

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Undisputed testimony provided to the hearing by the tenants explained that this tenancy began on April 1, 2016. Rent is \$2,575.00 per month, and security and pet deposits of \$1,250.00 each, paid at the outset of the tenancy continue to be held by the landlord. The tenants said they were seeking an Order directing the landlord to comply with section 28 of the *Act*, which states, "A tenant is entitled to quiet enjoyment including but

not limited to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only the landlord's right to enter the rental unit in accordance with section 29 and use of common areas for reasonable and lawful purposes, free from significant interference."

Testimony was provided by the tenants that they had suffered harassment and intimidation at the hands of the landlord. The tenants said that a break and enter incident occurred, and that the landlord now accused them of being involved. The tenants explained that following this incident they have incurred constant intimidation and threats from the landlord and no longer felt comfortable in the rental building. As part of their evidentiary package the tenants supplied several email message exchanges that they had with the landlord. In addition, the tenants detailed text and in-person harassment to which they say they had been subject.

The landlord disputed that he had anything other than a professional relationship with the tenants. The landlord said that he had very strong suspicions that guests of the tenants were involved in criminal activity which took place in the building and that the incident in question remained an active, ongoing investigation with the local police department. The landlord denied that he had ever intimidated either tenant and said that he hoped to maintain a professional relationship with them going forward.

Analysis

Section 62 of the *Act* allows me to order a party in a dispute to ensure that they are adhering to the rights and obligations afforded by the *Act*, the *Regulations* and the *Guidelines*. After considering the testimony of both parties and having reviewed the correspondence entered as evidence, I find it evident that the tenants and the landlord have a strained relationship. It would be pragmatic for the parties to minimize contact with one another and to ensure that all future interactions are recorded in writing. While I have no doubt that the tenants do not enjoy their interactions with the landlord, I find that insufficient detail related to the timing and frequency of these purported disturbances was provided to the hearing. This is not to say that conflict has not arisen between the parties; however, I do not find that the interactions described by the tenants provide sufficient evidence to demonstrate a loss of reasonable privacy or to show unreasonable disturbances. I dismiss the tenants' application for an order directing the landlord with leave to reapply. The tenants are free to pursue this application at a later date, if they feel that their rights under the *Act*, *Regulations* or *Guidelines* are violated in the future.

Conclusion

The tenants agreed to pay the landlord a monetary award of \$75.00.

The landlord withdrew the 10 Day Notice to End Tenancy dated May 2, 2018. This 10 Day Notice is of no force or effect.

The tenants' application for orders directing the landlord to comply with the *Act* is dismissed with leave to reapply.

The remainder of the tenants' application is withdrawn. Should they feel inclined, the tenants may reapply for these matters at a later date.

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 29, 2018

Residential Tenancy Branch