



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on April 27, 2018, wherein the Tenants disputed a rent increase, sought to cancel a 1 Month Notice to End Tenancy for Cause issued on April 17, 2018 (the "1 Month Notice"), requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the tenancy agreement, and to recover the filing fee.

The hearing was conducted by teleconference on June 20, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. Should the Landlord be Order to comply with the Residential Tenancy Act, the *Regulation* or the Tenancy Agreement?

3. Is the rent increase allowable?
4. Should the Tenants recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving the notice on a balance of probabilities. As such, even though the application before me was made by the Tenants, the Landlords presented their evidence first. The Landlord F.B. testified on behalf of the Landlords as the Landlord, Y.B., disconnected shortly after the hearing commenced.

A copy of the 1 Month Notice was provided in evidence. A review of this document confirms that the Landlords did not check off any of the required boxes; however in handwriting they wrote that the Tenants refused to pay the requested rent and that the Landlords wished to regain possession of the home. F.B. testified that since issuing the 1 Month Notice he was informed that he should have issued a 2 Month Notice to End Tenancy for Landlord's Use as he simply "wants his home back".

In terms of the rent increase the F.B., testified that the tenancy began July 1, 2013. He confirmed that the Tenants rent the upper floor of a two unit home.

F.B. claimed that initially the Tenants paid \$975.00 per month in rent "with the understanding" that they were to do work around the house equivalent to approximately \$300.00 per month. He stated that the intention was that they were to provide services which would bring the amount paid to "fair market value". He further stated that he arrived at this figure by doing internet research about comparable rentals.

The tenancy agreement provided in evidence confirms the \$975.00 figure and describes it as "reduced rent". There is no mention of fair market rent, or the \$300.00 figure suggested by the Landlord.

The Landlord testified that at the time of the hearing the Tenants were paying rent in the amount of \$1,300.00 and have been doing so since October 2016.

The Landlord testified that he recently issued a rent increase to \$1,650.00. Documents submitted in evidence confirm that the Landlords did not issue the Notice of Rent Increase on the approved form and that they simply made the request by email.

The Tenants confirmed that they agreed to the \$1,300.00 rent increase, but did not agree to the \$1,650.00 increase. They also confirmed that while they continue to care for the lawn and maintain the property they are no longer improving the property.

Analysis

After considering the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

A tenancy can only be ended in accordance with the *Act*. A Landlord who issues a 1 Month Notice to End Tenancy for Cause pursuant to section 47, must state the reasons for issuing the Notice. This is provided for in section 52 of the *Act*, which reads as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Further, a 1 Month Notice to End Tenancy for Cause must clearly indicate a legal reason as set out in section 47 (which deals with notices to end tenancy for cause). In the case before me the Landlord confirmed that he wished to regain possession of the rental unit; in such situations the Landlord must issue a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. This was not disputed by the Landlord.

I find that the 1 Month Notice does not comply with sections 47 and 52 as it fails to indicate a valid reason to issue the Notice. **I therefore cancel the 1 Month Notice to End Tenancy. The tenancy shall continue until ended in accordance with the Act.**

A Landlord may not raise rent unless the rent increase complies with Part 3 of the *Residential Tenancy Act*, and Part 4 of the *Residential Tenancy Regulation*.

I find that the Tenants agreed to the increase in rent to \$1,300.00. I further find that this agreement was made on the basis that they would not be expected to perform any additional services or make any further improvements to the property.

Accordingly, I find the current monthly rent payable is \$1,300.00. I find that the Tenants are currently paying fair market rent for the rental unit, and that the original agreement, that the Tenants were to be credited an amount for the work around the rental property, is no longer applicable. The \$1,300.00 amount is not a “reduced rent” as provided for in the written agreement and the Tenants are not be expected to perform any services or make any improvements over and above those required by section 32 of the *Act* and those set out in *Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises*.

I will now address the Tenants’ request that the Landlord comply with the *Residential Tenancy Act* and *Regulations* as it relates to the requested rent increase to \$1,650.00.

The evidence before me confirms that the Landlord did not issue the rent increase in the required form and that it does not comply with either the *Act* or the *Regulation*. **I therefore find that the Landlord’s request for a rent increase to \$1,650.00 is not valid.**

The parties confirmed that the Landlord has issued a 2 Month Notice to End Tenancy for Landlord’s Use. That notice was not before me. The Tenants were reminded that should they wish to dispute the 2 Month Notice, they must make an application within the strict timelines imposed by section 49 of the *Residential Tenancy Act*.

The parties are also reminded that pursuant to section 20(e) of the *Act*, a term of a tenancy agreement must not include an automatic forfeiture of a security deposit at the end of the tenancy. The written agreement before me indicates the parties agreed that “any cleaning necessary upon vacancy will be deducted from the deposit”; this clause is vague and unenforceable pursuant to section 20 as noted above.

The Tenants have been substantially successful in their application and are therefore entitled, pursuant to section 72 of the *Act*, to recover the \$100.00 filing fee. They may reduce their next months' rent by \$100.00 as compensation for this amount.

Conclusion

The 1 Month Notice is cancelled.

The current rent is \$1,300.00.

The Landlord's request for a rent increase to \$1,650.00 is invalid.

The Tenants are to be credited \$100.00 towards their next months' rent as compensation for the filing fee.

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 21, 2018

Residential Tenancy Branch