



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNRL-S, FFL

Tenant: CNR, OLC, ERP

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants to cancel a 10 Day Notice to End Tenancy, an emergency order for repairs and an order that the Landlord comply with the Act, regulations and tenancy agreement. The Landlord brought a counter-claim requesting an Order of Possession and a monetary order for payment of rent, utilities and damages; the Landlord also requests payment of the \$100.00 filing fee.

The Landlord and Tenants appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

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.

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.

Issues to be Decided

Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order for Possession, pursuant to section 55 of the Act?

Are the Tenants entitled to an order against the Landlord for emergency repairs, pursuant to section 33 of the Act?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulations and/or tenancy agreement, pursuant to section 62 of the Act?

Is the Landlord entitled to a monetary order for payment of rent arrears, utilities and damages, pursuant to section 67 of the Act?

Is the Landlord entitled to payment of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The tenancy began August 1, 2015 with monthly rent of \$1,800.00 and a \$900.00 security deposit. A copy of the original tenancy agreement was submitted into evidence; the addendum states that the Tenant is responsible for an additional \$100.00 per month for water expenses. In addition, it states that the Tenants will be responsible for maintaining gas, hydro and cable in their own names. There is an additional paragraph 7 added in handwriting which the Tenant states was not present when she signed the document, although it was present on the version she submitted into evidence to the Residential Tenancy Branch. The additional paragraph essentially indicates that the \$100.00 water charge stipulated in paragraph 5 will be adjusted quarterly based on actual water usage.

The rent was unilaterally raised to \$2,050.00 on August 1, 2017 via an email message dated July 1, 2017; the Tenants argue that at no point did they sign off or agree to this rent increase, and they attempted several times to discuss concerns about the legality of the rent increase with the Landlord. The Tenant testified that the Landlord expected to increase the rent another \$300.00 on April 2018, which the Landlord agrees was discussed. The Landlord states that they were unaware of the legal requirements with respect to rent increases, and argue that the email exchanges are sufficient evidence that the Tenants agreed to the new rental amount of \$2,050.00. Both parties agree that the Tenants began paying this higher rate as of September of 2017.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on June 2, 2018 by leaving it with the Tenant. It was not signed by the Landlord; it indicated that \$900.00 was owing for utilities and \$2,050.00 owing for rent for the month of June. The stated effective date of the Notice was June 12, 2018. The Tenants filed a dispute application on June 7th, within the time limits set out in section 46(4) of the Act.

The Tenants argue that they paid one half the June rent and were waiting on this dispute hearing to determine whether July rent would need to be paid. The Landlord claims that the \$1,050.00 paid June 2nd was for the remaining half of the May rent, and this is why their 10-Day Notice only stipulated that June rent was still outstanding. The Landlord claims the sum of \$2,050.00 for June rent and \$2,050.00 for July rent as this is their understanding of the new monthly rent amount. It was noted that the evidence submitted by both parties with respect to monthly rent and utilities was inconsistent and confusing, as was the testimony and arguments

made by both parties. At times, \$2,000.00 a month is indicated, and \$2,050.00 in other documentation. There was a lack of clarity and a clear misunderstanding as to what was owing, when and how.

The Landlord states that there are arrears of \$2,050.00 for the month of June when the Notice was filed, and she is now claiming July rent as well, for a total claim of \$4,100.00, while the Tenants claim that they were overcharged rent for the previous nine months and are entitled to use the overpayment as a credit towards the June rent. The Landlord further claims unpaid utilities of \$900.00.

The Landlord claims \$900.00 in unpaid utilities and that a formal letter and copies of the bills went to the Tenant in April, which the Tenant agrees to receiving. However, the Tenants argue that they only agreed verbally to \$50.00 per month for water and the rest of the utilities are in their name. It is their position that they owe no money for utilities as they have paid what they agreed to pay.

Both parties made submissions regarding needed repairs. The Tenants provided photographs to show that their basement shower area has a leak and that the shower base was rotted and is now supported by wood blocks; they were told to make temporary repairs after the Landlord met with them to inspect the area. Those repairs did not last and the leak appears to be an ongoing problem. The Tenant testified that the smell is very noticeable because of all the water soaked into the carpeting and that the shower is unsafe to use because the base needs to be re-built. The Landlord states that they became aware of the concern in May and assumes that the wood blocks were always in place since they bought the place. They assumed the repair was done by the Tenant but had not heard about the leak reoccurring until served with this dispute notice.

The Landlord claims \$500.00 for repairs to a broken glass in the main door, which the Tenants agrees happened when their son was moving things. The claim is based on best estimate of the cost.

Analysis

Under section 46 of the Act, a landlord may serve a 10-Day Notice to End Tenancy if a tenant is in arrears of rent or has unpaid utility charges.

Rent Increase and Rent Arrears:

Section 43 states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations, as ordered under an application or by agreement with the tenant. Under Policy Guideline 37 of the Residential Tenancy Branch, and section 22 of the regulations, a landlord may only impose an annual rent increase up to, but not greater than an amount calculated as follows:

$$\text{Percentage amount} = \text{inflation rate} + 2\%$$

The allowable increase from \$1,800.00/month would be to \$1,872.00 per month, as per the calculator available online through the Residential Tenancy Branch. The parties may agree to a higher increase, but only if the agreement is in writing and it must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase. Furthermore, that rent increase can only take effect three full months after the agreement is made, pursuant to section 42(2) of the Act.

Based on the evidence, I find that the Landlord has failed to show that the Tenants agreed to this additional rent increase in writing and with their signature, or that three months passed before it took effect. The Tenants testified that they, in fact, disputed this amount and tried to negotiate with the Landlord for months, before finally filing this dispute application after receiving the eviction notice.

I find that the Tenants have overpaid their rent by \$250.00 per month since September of 2017, to avoid being evicted while they attempted to negotiate an acceptable rent increase with the Landlord. This overpayment continued for 9 months, for a total overpayment of \$2,250.00. Under section 43(5) of the Act, "if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase". I find that the Landlord set a rent amount that was not in compliance with the Act and regulations; accordingly, I offset the rent owing by that overpayment.

I find that the Tenants are liable to pay the Landlord the sum of \$1,800.00 for each of June and July, for total arrears of \$3,600.00; however, this amount is offset by the overpayment by the Tenants in the sum of \$2,250.00. Accordingly, the balance of the rent arrears owing by the Tenants to the Landlord is **\$1,350.00**. The Landlord is entitled to a monetary order for this amount.

Utilities:

The Landlord's 10-Day Notice to End Tenancy also claims \$900.00 in unpaid utilities. Section 46(6) requires that a landlord provide **written demand** for payment of utility charges and that the landlord allow 30 days for the tenant to pay the charges. I have reviewed the evidence the Landlord provided a letter with bills to the Tenants on April 19, 2018 and the Landlord states that no attempt was made by the Tenants to make payment since that time and that over 30 days has passed.

I find that the Tenants did agree to pay \$100.00 a month for additional water expenses because there is a signed addendum to the tenancy agreement which confirms this in paragraph 5. I further find that the Landlord has adjusted the amounts owing with actual water bills received, which was agreed upon in the additional paragraph 7 handwritten on the Tenants' copy of the addendum which they filed into evidence. I am satisfied that the sum of **\$900.00** in adjusted utility charges are now due and owing by the Tenants to the Landlord and a monetary order will be granted for this amount.

Order of Possession:

I have found that the grounds upon which the Landlord served the 10-Day Notice to End Tenancy are with merit. The evidence proved that the Landlord was entitled to serve the Notice for Unpaid Rent or Utilities, however, I find that the Notice itself is defective: a notice to end tenancy must comply with section 52 of the Act, which states in part:

*“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”*

I find that the 10-Day Notice to End Tenancy served by the Landlord on the Tenants fails to comply with this section, as there is no signature by the Landlord. The Notice to End Tenancy is hereby cancelled and of no force or effect; the tenancy shall continue at the monthly rate of \$1,800.00 per month, until terminated with proper notice by either party. Any future change to the rent amount must be completed using proper forms and calculations as provided for in the legislation, and with 3 full month's written notice.

Repairs:

Section 33 of the Act has a specific list of items that are deemed to be “emergency repairs” and thus warranting an expedited hearing on the disputed issues, including *major* leaks in pipes or the roof. I find that the repair requested by the Tenants is not deemed to be an *emergency* repair and therefore I am not inclined to make an order under that section for an emergency repair; however, I will address these concerns as regular maintenance items under section 32 of the Act, as the Tenants have also requested an Order that the Landlord comply with the Act in their Application.

Section 32 of the Act requires the Landlord to *“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.”*

I find that the Landlord is responsible for repairing any plumbing issues that are not proven to be the result of actions or neglect of the Tenants. In this instance, the leaking piping in the basement bathroom was brought to the attention of the Landlord on more than one occasion, prompting the Landlord to instruct the Tenant to make the repair himself. This has not resolved the issue. I find that the Landlord must attend to this repair and any damage that requires remediation as a result of the leaky plumbing. There is no evidence to suggest that the Tenants caused this leak to occur. The repair must be arranged by the Landlord within one month of the date of this decision, and the Tenants shall grant access to ensure this repair is completed.

With respect to the broken glass door, section 32 also requires the Tenants to repair damage to the rental unit or common areas caused by their actions or neglect. I find that the glass in the door must be replaced by the Tenants as their son broke the glass. The Tenants have two

months to repair that damage at their own expense. If the damage is not repaired within that time period, the Landlord may seek any remedy authorized under the Act, including seeking compensation for the cost of repairs..

As the landlord was largely unsuccessful in their claim, I am not prepared to award the filing fee.

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

Conclusion

The 10-Day Notice to End Tenancy for Unpaid Rent and Utilities is hereby cancelled and of no force or effect; the Landlord's claim for an Order for Possession is dismissed without leave to reapply.

The rental increase to \$2,050.00 effective August 1, 2017 is not valid or binding. The monthly rent amount is set at \$1,800.00 as per the terms of the tenancy agreement.

The Tenants shall pay the Landlord the total sum of \$2,250.00 for rent arrears and utilities owing as at the date of the hearing.

The Landlord shall repair the leaky plumbing in the bathroom and do any required remedial work within 30 days of the date of this decision. The Tenants are not entitled to withhold rent as a result of this repair work. The Tenants shall repair the broken glass in the door within 60 days of the date of this decision.

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: July 11, 2018

Residential Tenancy Branch