



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF, CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package, the amendment to the application for dispute and the submitted documentary evidence of the other party. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset it was clarified with both parties that the tenants had amended the application for dispute to include a request to cancel the 1 month notice dated August 28, 2018. Due to extensive discussions on the 1 month notice dispute, both parties were notified that the possession issue would take precedence and that the remaining portion of the tenants' application would be dismissed with leave to reapply pursuant to Rule of Procedure 2.3 where Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without

leave to reapply. The hearing shall proceed on the tenants' application to cancel the 1 month notice and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any documentary evidence regarding a tenancy agreement. Both parties confirmed in their direct testimony that this tenancy began on November 1, 2015 on a month-to-month basis with the monthly rent at \$800.00 payable on the 1st day of each month. A security deposit of \$350.00 was paid.

Both parties confirmed that on August 31, 2018, the landlords served the tenants with the 1 Month Notice dated August 28, 2018 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of October 1, 2018 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant has not done required repairs of damage to the unit/site.

The details of cause state:

Tenant deep fries food and doesn't turn the fan on, that is causing problem when we can smell it in whole house. They leave basement door open and let insect and mices enter the basement. They let extra people stay with them without asking us.

[Reproduced as written]

The landlords claims that there are an unreasonable number of occupants in the rental unit and stated that the tenants had a newborn baby approximately 4 months ago which they claim is an unreasonable number of occupants and a breach of the tenancy agreement. The landlords also claimed that the tenants had relatives visiting/staying

with them without notice for approximately a 2 month period. The tenants dispute these claims, but confirmed that they have a newborn baby.

The landlords also claim that the tenants have failed to make required repairs to the rental unit, but have not referenced specifically what was damaged or how and when written notice was given to the tenants to make the required repairs. No details were provided in the notice to end tenancy. The landlords stated that the tenants broke a fire alarm, a kitchen cabinet and have not paid rent and refused to turn on the exhaust fan when deep frying food. The tenant has disputed the landlord's claims.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties have provided conflicting testimony. Both parties confirmed that there is no signed tenancy agreement. The landlord has claimed that the tenants have an unreasonable number of occupants in the rental unit. Both parties confirmed that the tenants, a total of 3 persons (2 adults and one child) recently added a new occupant, a second child to make 4 persons occupying the rental unit. On this issue, I find that the landlord's claim that an unreasonable number of occupants occupy the rental unit to not be established. There is no signed tenancy agreement dictating the terms or number of occupants in this rental unit. I find that an additional newborn baby does not meet this claim. On this basis, this reason for cause is dismissed.

On the second reason for cause, the tenant has not done the required repairs of damage to the unit/site. In this case, the landlord failed to identify any specific repairs to be made in the notice to end tenancy and only mentions that the tenants have not turned on the exhaust fan when deep frying; or leave the basement door open letting in mice. These are obviously not issues with repair or damage. As such, the landlord has failed to establish a claim that the tenants' have failed to make repairs to damage to the unit/site. No specific mention was provided on the notice to end on the details of repairs required. This reason for cause is dismissed.

The tenants having been successful in cancelling the one month notice dated August 31, 2018 are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants' application to cancel the one month notice is granted. The tenancy shall continue. I authorize the tenants to withhold one-time \$100.00 from the next months' rent upon receipt of this decision for recovery of 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: October 09, 2018

Residential Tenancy Branch