



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenants' 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 losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:31 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. Tenant DL (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the tenant confirmed that they received the landlord's 1 Month Notice placed on the tenants' doorstep on April 27, 2019, I find that the tenant was duly and sufficiently served with this Notice in accordance with sections 71(2)(c) of the *Act*.

The tenant provided undisputed sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package and written evidence to the address the landlord provided to the tenant when this tenancy began by registered mail on April 30, 2019 and May 2, 2019. The tenant provided copies of the Canada Post Tracking Numbers as part of the tenants' written evidence for this hearing. In considering the adequacy of the tenants' service of these documents to the landlord, I note that the landlord's 1 Month Notice to End Tenancy failed to provide the tenants with an address where the tenants could serve documents to the landlord. I also note that the most recent Residential Tenancy Agreement that the tenant said the landlord had the tenant sign did not show a mailing address for the landlord. The tenant said that the landlord lives overseas and is seldom in this country. As the tenant supplied undisputed sworn testimony supported by written evidence in the form of the original Residential Tenancy Agreement with this landlord signed on October 6, 2016, I accept that the tenant has served the landlord with the dispute resolution hearing package and written evidence to the address the landlord has provided to the tenant during this tenancy. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord has been deemed served with the dispute resolution hearing package and written evidence on the fifth day after the tenant's registered mailing of these documents

At the hearing, the tenant testified that the landlord's local representative has recently accepted that the correct monthly rent for this rental unit is \$1,800.00, payable in advance on the first of each month. On this basis, the tenant withdrew that segment of their application disputing a rent increase which the tenant believed exceeded the amounts allowed under the *Act*. That portion of the tenants' application is hereby withdrawn.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant said that when they first moved into this rental unit in 2009, the monthly rent with the then landlord was \$1,750.00, payable in advance on the first of each month.

That landlord returned the tenant's security deposit when they sold the property to the current landlord, who purchased the property about three years ago.

The tenant said that they signed a new one-year fixed term Residential Tenancy Agreement (the original Agreement) with the new landlord on October 6, 2016. This term was to run from October 1, 2016 until September 30, 2017. Monthly rent according to the terms of the original Agreement was set at \$2,000.00, payable in advance on the first of the month. At that time, the tenant paid a \$1,000.00 security deposit to the landlord. According to the terms of the Agreement, the tenant was responsible for all utilities. When the fixed term expired the tenancy converted to a month -to-month tenancy.

The tenant testified that there was a second small rental unit in this building, described as an ensuite unit by the tenant. Since there is only one utility meter for the building, the tenant said that the tenant has been required to pay all of the utilities for the property, including that portion of the dwelling occupied by the tenant in the second rental unit. After frequent enquiries with the landlord's representative, the tenant was able to have the monthly rent reduced by \$200.00 to \$1,800.00. The tenant said that this was the reason that a second Residential Tenancy Agreement was undertaken with the landlord, a copy of which the tenant entered into written evidence. This second Agreement identified a numbered company as the landlord, although the tenant said that the property is still owned by the same person who signed the original Agreement and is the Respondent in this application. This second Agreement was to cover the one year fixed term from March 29, 2018 until March 29, 2019. Since no new agreement has been signed, this tenancy converted to a month-to-month tenancy as of March 30, 2019.

Although the tenants did not enter into written evidence a Monetary Order Worksheet or any real breakdown of the tenants' claim for a monetary award of \$3,600.00, the tenant said that this figure was arrived at as a result of the tenants having been required to pay an extra \$200.00 in utilities for a total of 18 months. The tenants did not provide any written evidence to demonstrate their utility charges. Rather, the tenant maintained that the landlord's willingness to reduce the monthly rent by \$200.00 as of March 2018 reflected the landlord's recognition that the tenants were being unfairly charged utilities that should have been the responsibility of the tenant in the ensuite unit or the landlord. I noted that the landlord was alerted to the tenants' intention to seek a monetary award of \$3,600.00 for this item by the tenant's notation in their application that this amount was for money that "they owe me for onsweet utilities."

The tenants entered into written evidence a copy of the 1 Month Notice, requiring the this tenancy to end by May 31, 2019. The sole reason cited by the landlord for the issuance of the Notice was that the tenant is repeatedly late paying rent. At the hearing, the tenant said that they were only late in paying rent a couple of times.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice. In this case, as the landlord provided no written evidence or sworn testimony, I find that the landlord has failed to meet the burden of proof required to end this tenancy on the basis of the 1 Month Notice. I allow the tenants' application to set aside the landlord's 1 Month Notice.

Based on the tenants' sworn testimony and written evidence, I order that the current monthly rent for this tenancy is \$1,800.00, the amount identified on the second Residential Tenancy Agreement.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord has contravened the *Act* and that the tenants are entitled to compensation for this contravention.

I have given the tenants' sworn testimony and written evidence with respect to their monetary claim careful consideration. The tenant testified that the landlord's willingness to reduce the monthly rent by \$200.00 in March 2018 confirmed that the tenant was overpaying that amount in utilities for the usage of those utilities by the tenant in the other rental unit in this building. However, other than the tenant's sworn testimony, there is little written evidence to support the tenant's assertion that the \$200.00

reduction in rent was a direct result of the tenant's complaints about being overcharged for utilities that should have been the responsibility of the other tenant in this building. While the tenants did not provide any copies of utility bills that would show that they were being separately billed for utilities, the tenant's sworn testimony in this regard is consistent with the provisions in both Agreements, which showed the tenants responsible for all utilities for the rental space they were using.

On a balance of probabilities, I find that there is undisputed sworn testimony that the tenants have been paying all of the utility charges for this property, at least some of which was for space that was not rented to them. The *Act* does not enable landlords to require tenants to pay for utilities used by others in a rental property.

In the absence of actual utility bills, it is somewhat difficult to assess the extent to which the tenants have been overcharged for utilities. The tenant gave undisputed sworn testimony that they have an equal billing gas account requiring them to pay \$330.00 each month for this service. In addition, the tenant said that the landlord has failed to provide the tenants in this building with a furnace, so the tenants' heating costs have escalated due to the use of electric baseboard heaters as a source of heat. Under such circumstances, hydro costs no doubt vary over time and are highly dependent on outside temperatures.

In the absence of any evidence from the landlord, I find that the best estimate of the amount of overcharging that has occurred as a result of the landlord's failure to separately meter the second rental unit in this building is the \$200.00 per month figure claimed by the tenants. As of March 29, 2018, the tenants' monthly rent was reduced by \$200.00, which appears to have been the allowance given by the landlord for the tenants' payment of the utility bills for this entire property. Consequently, I allow the tenants' application for a monetary award of \$3,600.00, which represents an award of \$200.00 per month for the 18 months between October 2016 and March 2018, when the tenants were paying all of the utilities for this property.

Since the tenants have been successful in their application, I allow them to recover their filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice, which is set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the

Act. The monthly rent until revised in accordance with the *Act* is \$1,800.00 per month, the amount set in the most recent written Agreement between the parties.

I issue a monetary Order in the tenants' favour in the amount of \$3,700.00. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As this tenancy is continuing, the tenants may also implement this award by reducing future monthly rent payments in the amount of \$3,700.00 over time. In that event, the monetary Order is no longer valid and cannot be used by the tenants.

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 07, 2019

Residential Tenancy Branch