



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, MNDCL, FFL

Introduction

This hearing dealt with applications from both the tenants and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- dispute of a rent increase pursuant to section 41 of the *Act*; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

The landlord applied for:

- a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with his son C.C. as an assistant to assist with translation.

Preliminary Issue – Landlord’s Application Dismissed with Leave to Reapply

The landlord testified that he served the tenants with the Notice of Dispute Resolution Proceeding by leaving it in their mailbox. The tenants denied receiving the landlord’s notice of hearing. I explained to the landlord that leaving the Notice of Dispute Resolution Proceeding in the tenants’ mailbox is not an acceptable method of service of the notice of hearing, which is set out in section 89(1) of the *Act*. Therefore, I advised

the landlord that his application for dispute resolution was dismissed with leave to reapply due to improper service.

Preliminary Issue – Tenants' Application Service of Documents

The tenants testified that they served their Notice of Dispute Resolution Proceeding to the landlord by Canada Post registered mail, which was confirmed received by the landlord.

As such, I find that the landlord was served with the tenants' notice of hearing in accordance with section 89(1) of the *Act*.

The tenants testified that they served the landlord with their Amendment to their original application for dispute, along with all of their evidence, by Canada Post registered mail on March 20, 2019. At first the landlord denied receipt of the tenants' evidence, however he acknowledged receipt of the tenants' Amendment application. After the tenants testified that their evidence was also included in the package with the Amendment application, the landlord acknowledged receipt of several pages of the tenants' evidence as well as the Amendment.

The landlord testified that he served the tenants with his evidence to dispute the claims in their Application, by leaving it in the tenants' mailbox on June 2, 2019. The landlord submitted photographic evidence showing him leaving two individually addressed packages, noted with the file number of the tenants' Application for dispute, in the tenants' mailbox.

The tenants' first denied receipt of the landlord's evidence, however, after reviewing their documents, they acknowledged receipt of approximately 30 pages of evidence received in the package from the landlord.

Section 88 of the *Act* permits parties to serve documents (other than those referenced under section 89 of the *Act*) by leaving the documents in a mailbox or mail slot.

Therefore, I find that the landlord served the tenants with his evidence pertaining to their Application in accordance with the *Act*, and I advised the parties that I would consider the landlord's evidence served to tenants' in relation to the tenants' Application.

Preliminary Issue – Amendment of Tenants' Application

The tenants' original application indicated a total requested claim of \$17,760.00 for compensation. At the outset of the hearing, the tenants stated that they submitted an Amendment to their original application to reduce their claim to \$4,400.00 to reflect compensation for loss of quiet enjoyment and harassment in the amount of \$400.00 per month over the past 11 months, and to dispute a rent increase. The tenants explained that they reduced their original claim amount in an effort to present a reasonable settlement offer to resolve the conflict with their landlord.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to reduce the amount of their claim to \$4,400.00 since it would not be prejudicial to the landlord, and to add their claim to dispute the rent increase.

Preliminary Issue – Prior and Upcoming Dispute Hearings Between the Parties

The parties confirmed that there had been prior hearings held between the parties over the previous months, as well as a hearing held earlier in the day before this hearing. Further to this, the parties confirmed that at least three upcoming hearings were scheduled over the upcoming weeks.

Issue(s) to be Decided

Should the Notice of Rent Increase be cancelled?

Are the tenants entitled to a monetary award for compensation for the landlord's contravention of the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A one-page written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began December 15, 2016 as a fixed term tenancy, which converted to a month-to-month tenancy at the end of the fixed term.
- Current monthly rent of \$1,480.00 is payable on the first of the month.

- At the beginning of the tenancy, the tenants paid a security deposit of \$740.00, which continues to be held by the landlord.

The tenants continue to reside in the rental unit.

The tenants disputed a Notice of Rent Increase received from the landlord's agent dated February 27, 2019. A copy of the Notice of Rent Increase, submitted into documentary evidence by the tenants, indicated that the tenants' current monthly rent of \$1,480.00 had not been increased since the start of their tenancy on December 15, 2016, and therefore a 2.5% rent increase (representing \$37.00) was being applied effective July 1, 2019 resulting in a new monthly rent of \$1,517.00.

The tenants testified that they did not dispute the amount of the increase nor the notice period provided for the increase, but they disputed the rent increase on the grounds that maintenance was required to their sewer system which had resulted in services not being provided to them.

I note that one of the upcoming dispute hearings filed by the tenants pertains to a request for emergency repairs to the sewer system, for which the hearing is scheduled to be held in the near future.

The tenants claimed that they have been living under the threat of eviction since May 2018 as they have received several notices to end tenancy from the landlord and a request from the landlord for the tenants to sign a Mutual Agreement to End Tenancy. The tenants claimed that this has amounted to harassment and a loss of quiet enjoyment, for which they are seeking compensation of \$400.00 per month for the past 11 months, for a total of \$4,400.00.

The landlord disputed the tenants claim and testified that the tenants have not abided by the conditions of the tenancy agreement, and as a result they have faced eviction notices as a result of their behaviour. The landlord testified the tenants have harassed the main floor occupants, installed a lock to prevent the main floor occupants from accessing the laundry, broke the landlord's lock on the garage to gain access, and failed to maintain the yard, and recently assaulted the landlord. The landlord testified that he had been granted an Order of Possession against the tenants in a prior hearing. I note that the tenants applied for a Review Consideration of the Decision granting the Order of Possession to the landlord, and as such, the Order of Possession was set

aside as the tenants were granted a new hearing, scheduled in the near future, to re-adjudicate the issues in that matter.

Analysis

As explained in the Introduction section of this Decision, the landlord's Application for Dispute Resolution was dismissed with leave to reapply due to improper service of the Notice of Dispute Resolution Proceeding package.

I have addressed the tenants claims to dispute the rent increase and for compensation for loss of quiet enjoyment separately below.

Tenants' Dispute of Notice of Rent Increase

Section 41 through 43 of the *Act* set out the requirements for a rent increase, as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) 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.

Having reviewed the Notice of Rent Increase, I find that the notice complies with the requirements set out in sections 42 and 43 of the *Act*, therefore, in accordance with section 43(2) of the *Act*, I find that the tenants are not entitled to dispute the rent increase as it complies with this *Act*.

Based on the testimony and evidence before me, on a balance of probabilities, I find that the Notice of Rent Increase is valid as it complies with the *Act*, and therefore the tenants' claim to dispute the increase is dismissed.

As I noted earlier in this Decision, the tenants have an upcoming hearing scheduled to address their claims that emergency repairs are required to fix services impacted by the sewer system. Those claims cannot be addressed through an Application to Dispute a Rent Increase.

Tenants' Claim for Compensation for Loss of Quiet Enjoyment

Under section 28 of the *Act*, a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;

- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants have claimed compensation due to loss of quiet enjoyment as a result of harassment by the landlord due to receiving multiple notices to end tenancy. Through the evidence submitted, I note that both parties have filed applications for dispute resolution against each other, and that the parties have had four prior arbitration hearings which included addressing notices to end tenancy, amongst other claims. The landlord submitted evidence that he was successful in obtaining an Order of Possession against the tenants as a result of a 10 Day Notice to End Tenancy for Unpaid or Utilities (file number noted on the cover sheet of this Decision) however, that decision has been set aside pending the results of a review hearing as a result of the tenants' application for reconsideration of the original decision. Further, the landlord submitted evidence pertaining to an allegation of being physically assaulted by the tenant D.B., for which he filed a police report.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further sufficient evidence, the party with the burden of proof has not met the onus to prove their version of events.

Having considered the evidence and testimony of both parties, on a balance of probabilities, I find that there has been an ongoing acrimonious tenancy relationship between the parties, with both parties filing applications for dispute against each other. As such, I do not find that the tenants submitted sufficient evidence to prove their claim that the landlord's issuance of four notices to end tenancy over the course of the past year constituted a breach of quiet enjoyment as set out in section 28 of the *Act*. As such, the tenants' claim on this matter is dismissed.

Conclusion

The landlord's application is dismissed with leave to reapply due to an issue with service of the application for dispute resolution. Therefore, the landlord must bear the costs of his filing fee.

The tenants' application is dismissed in its entirety without leave to reapply.

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 10, 2019

Residential Tenancy Branch