



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, tenant J.H., tenant C.C. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants called tenant J.H.'s mother as a witness (the "witness").

Both parties agree that the landlord was served with the tenants' application for dispute resolution via registered mail. Neither party could recall the date it was sent or received. I find that the tenants' application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agree to the following facts. This tenancy began on November 1, 2018 and is currently ongoing. A tenancy agreement was not signed by the parties; however, the parties agree that the tenancy is a one-year fixed term tenancy.

The parties agreed that the tenants would pay tenant J.H.'s parents \$1,200.00 on the first day of every month and the witness would use that money to fund renovations to the subject rental property. The witness testified that she arranged for the contractors to complete renovations to the subject rental property including the installation of new carpets and painting.

The landlord confirmed that the renovations the tenants agreed to complete were not for damage the tenants did to the subject rental property.

Both parties agree that as of June 1, 2019 the tenants started paying the landlord the \$1,200.00 per month rent instead of tenant J.H.'s parents.

The landlord testified that the work done at the subject rental property was not done very well and requires remediation. The landlord testified that the tenants keep the subject rental property dusty and dirty and that she is concerned that the cleanliness level of the subject rental property will cause damage to the subject rental property.

The tenants testified that they have completed the remediation requested by the landlord and deny that the subject rental property is so dirty it will damage the subject rental property.

Both parties agree that on May 31, 2019 the landlord personally served the tenants with a One Month Notice to End Tenancy for Cause with an effective date of July 1, 2019 (the "One Month Notice").

The landlord testified that she meant to serve the tenants a Two Month Notice to End Tenancy, not the One Month Notice. The landlord testified that she did not serve the tenants with a Two Month Notice to End Tenancy.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant has not done required repairs of damage to the unit/site.

The tenants testified that they are seeking an Order that the landlord comply with their oral tenancy agreement and allow this tenancy to continue.

Analysis

Section 47(1)(g) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time.

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that since the repairs and renovations completed by the tenants were not completed for damage to the rental unit caused by the actions or neglect of the tenants, the tenants have not breached section 32(3) of the *Act*.

Since the tenants have not breached section 32(3) of the *Act*, the landlord is not entitled to evict the tenants under section 47(1)(g) of the *Act*. I therefore find that the One Month Notice is cancelled and of no force or effect. Pursuant to section 62 of the *Act*, I Order this tenancy will continue in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

I Order this tenancy continue in accordance with the *Act*.

The tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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 29, 2019

Residential Tenancy Branch