



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, LAT, LRE, MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to dispute a rent increase, for authorization to change the locks, to restrict or suspend the Landlord’s right to enter the rental unit, for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution. On July 9, 2019 the Tenants filed an amendment to add a claim to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and to increase the monetary claim.

One of the Tenants was present for the teleconference hearing, as was the Landlord and a law student representing the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord also confirmed receipt of the amendment filed by the Tenants on July 9, 2019. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an Application for Dispute Resolution must be related and unrelated claims may be dismissed. As such, the parties were informed that the hearing would address the dispute over the One Month Notice only and the remaining claims would be dismissed, with leave to reapply. However, at it was determined during the hearing that the parties

were not in agreement as to whether a rent increase had been issued, the Tenants' application to dispute a rent increase was also heard and will be considered in this decision as will the Tenants' application for the return of the filing fee. The Tenants are at liberty to reapply for the remainder of the claims.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Were the Tenants issued an illegal rent increase?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties agreed that the tenancy started on July 15, 2017 for rent in the amount of \$1,550.00. The Tenants paid a security deposit of \$1,000.00 at the start of the tenancy. The tenancy agreement was submitted into evidence which confirms these details as stated by the parties.

The Tenant stated that after one year, he received a text message to increase the rent to \$1,800.00. The Tenant submitted that as he was not aware of his rights, he signed a new tenancy agreement for rent in the amount of \$1,800.00. A copy of the tenancy agreement was submitted into evidence and was signed by both parties on June 4, 2018 for rent in the amount of \$1,800.00. The Tenant also stated that in 2019 he received another text message to increase the rent to \$2,300.00 although he stated that he did not agree to this.

The Landlord testified that in 2018 an additional bedroom and bathroom was provided to the Tenant and therefore the parties agreed on a new rent amount of \$1,800.00. The Landlord stated that the Tenant signed the new tenancy agreement agreeing to pay \$1,800.00 per month.

The Landlord stated that the rent was not increased to \$2,300.00 and is currently \$1,800.00 as stated on the tenancy agreement signed by both parties on June 4, 2018.

The Landlord testified that he served the Tenant with the One Month Notice by mail on July 2, 2019. The Tenant was unsure of the exact date the notice was received but confirmed it was a few days after July 2, 2019 and that it was received by mail.

A copy of the One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
- Tenant has not done required repairs of damage to the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The Landlord provided testimony that the tenancy was for two tenants but that many additional people have moved in. They stated that the Landlord is no longer aware of who is living in the suite. They referenced a photo showing clothes hanging outside as a sign of how many people live there as well as photos of two pieces of mail addressed to the rental unit and to people who are not tenants. The Landlord also noted that there are often a number of cars at the rental unit and submitted a photo of such.

The Landlord estimated that they may be 5 or 6 people residing in the rental unit. The Landlord also noted some damage that had occurred to the appliances as evidence that multiple people are using the appliances making it higher risk for damage to occur.

The Tenant stated that there are only two people residing in the rental unit, but that his family comes to visit often as they live nearby. He also noted a time when a family member stayed for a short period of time after moving from another province. The Tenant stated that he did not know who the mail was addressed to and wondered if it may be previous tenants.

The Landlord also testified as to concerns regarding maintenance of the yard of the rental unit through overgrown grass, damage to the fence and a general lack of care for the property.

The Landlord submitted a letter into evidence dated June 4, 2019 signed by a city bylaw officer. The letter states that “the property does not meet City property maintenance standards” and further notes that the lawn is overgrown and requires trimming.

The Landlord submitted a letter dated July 28, 2018 addressed to the Tenant in which he notes that a letter was received from the city about overgrown grass and vegetation in the front and side yard of the property. In the letter the Landlord further states that it is the Tenant’s responsibility to maintain the lawn and property. In a second letter dated July 26, 2019 the Landlord states that another letter was received from the city regarding the overgrown grass. The Landlord stated that he is not going to maintain the lawn anymore and that it is the Tenant’s responsibility. The Landlord also submitted photos of the property.

The Landlord stated that there are 2 rental units on the residential property and that the Tenant lives upstairs with a smaller rental unit downstairs with one tenant. The Landlord noted that the downstairs tenant is to take care of the yard at the side of the property while the upstairs Tenants are to maintain the rest of the yard. The Landlord stated that he was previously helping out the Tenants by cutting the grass but found out that it should be the Tenants’ responsibility. The Landlord stated that he has been taking care of the lawn since the Tenants moved in.

The Tenant stated that the Landlord has been cutting the grass since the start of the tenancy, so it is the Landlord’s responsibility if letters from the city are being received. He stated that the Landlord told him that he would take care of it, however the Tenant noted that he will cut the grass if it is his responsibility.

The Landlord also testified regarding issues with the washer and dryer in the rental unit and damage to the fence. The Tenant stated that the house is old, and the fence was not in good condition at the start of the tenancy. The Tenant also noted that there are issues with the washer and dryer that the Landlord has not fixed.

Analysis

Regarding the Tenant’s application to dispute a rent increase, I refer to Section 43(1) of the *Act* which states the following:

- 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.

(emphasis added)

The parties were in agreement that they signed a new tenancy agreement changing the monthly rent amount to \$1,800.00. I also accept the evidence before me of that tenancy agreement that shows that the parties signed the new agreement on June 4, 2018.

Although the Tenant testified that notice was provided to him in text message, I do not find that the method of initial conversations regarding the rent are relevant when the parties came to a written and signed agreement through a new rent increase. I also do not find any information before me that the rent was raised from \$1,800.00 as stated on the most recent tenancy agreement.

Therefore, I do not find evidence before me that an illegal rent increase was issued. The Tenants' application to dispute a rent increase is dismissed, without leave to reapply.

Regarding the Tenants' application to cancel the One Month Notice, I refer to Section 47(4) of the *Act* which states that a tenant has 10 days to dispute a One Month Notice. The notice was mailed to the Tenant on July 2, 2019 and the Tenant was unsure of the exact date it was received. As such, I refer to the deeming provisions of Section 90 of the *Act*, which state that a document served by mail is deemed served 5 days later. As such, I find that the Tenant is deemed to have received the One Month Notice on July 7, 2019. As the Tenant filed the Application for Dispute Resolution on July 17, 2019, I find that he applied within the 10 days allowable under the *Act*.

Therefore, the matter before me is whether the One Month Notice is valid. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

While the One Month Notice indicated that the Tenant has assigned or sublet the rental unit without permission, the Landlord did not provide any testimony or evidence of such. As both assignment and subletting involve the Tenant moving out of the rental unit, I do not find that this has occurred. Therefore, I do not find this a valid reason for ending the tenancy.

The One Month Notice also indicates that the Tenant has engaged in illegal activity that has caused damage to the property. However, I find that there was insufficient testimony or evidence regarding illegal activity and therefore do not find that this was a valid reason on the One Month Notice.

Regarding the Landlord's claim of an unreasonable number of occupants in the unit, I do not find sufficient evidence from the Landlord to establish this claim. I do not find that issues with a washing machine or clothes dryer indicate how many people are residing in the rental unit and also do not find clothes hanging up outside or mail addressed to someone else to establish that there are an unreasonable number of occupants in the unit. I also find it reasonable that the Tenant would have family visit which may account for additional cars at the rental unit at various times.

The Tenant denied that there are more than two people residing in the rental unit and as stated, I do not find sufficient evidence from the Landlord for me to be satisfied that the Landlord has met the burden of proof regarding this issue. Therefore, I do not find this to be a valid reason for ending the tenancy.

Regarding the claim of yard maintenance, damage to the fence and to the appliances, I am also not satisfied that this is a valid reason for ending the tenancy. While the Landlord submitted a letter from the city as well as letters to the Tenant regarding the lawn care issue, I am not satisfied that the issue was solely the responsibility of the Tenant. It seems that the Landlord was taking care of the yard until he realized that the Tenant was to do so as stated in a letter dated July 26, 2019. There is also another tenant on the property who the Landlord stated is to take care of a portion of the lawn.

As such, I find that the testimony of the Landlord was conflicting as to whether there was a clear arrangement between the parties (Landlord and all tenants on the residential property) regarding who was to maintain the lawn. As such, I suggest that the parties make a written agreement regarding yard maintenance. I am not satisfied that the issue with the lawn is the tenant not completing required repairs to the rental unit as stated on the One Month Notice. Regarding the fence and washer and dryer, I do not find sufficient evidence before me as to the damage/issues and to establish that they were caused by the Tenant.

Therefore, I find that the Landlord has not met the burden of proof to establish that the tenancy should end on the One Month Notice. The Tenants' application to cancel the

One Month Notice is successful. The One Month Notice dated July 2, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful in cancelling the One Month Notice, I award the Tenants the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as recovery of this fee.

Conclusion

The Tenants' application to dispute a rent increase is dismissed, without leave to reapply.

The One Month Notice dated July 2, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 from their next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: August 27, 2019

Residential Tenancy Branch