



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP RP RR MNDC LRE LA CNC DRI

Introduction

This hearing was convened as a result of two applications for dispute resolution filed by the Tenants. The first application was submitted to the Residential Tenancy Branch on December 29, 2019. The second application were submitted to the Residential Tenancy Branch on December 31, 2019 and was amended on February 14, 2020. The applications were scheduled to be heard together.

In the first application, the Tenants applied for an order that the Landlord make emergency repairs to the unit, site, or property, pursuant to the *Residential Tenancy Act* (the “Act”).

In the second application, the Tenants applied for the following relief, pursuant to the *Act*:

- an order that the Landlord make repairs to the unit, site or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- a monetary order for money owed or compensation for damage or loss;
- an order setting or suspending conditions on the Landlord’s right to enter the rental unit;
- an order authorizing the Tenants to change the locks to the rental unit;
- an order cancelling a One Month Notice to End Tenancy for Cause dated December 27, 2019 (the “One Month Notice”); and
- an order relating to a disputed rent increase.

The amendment of the second application, filed by the Tenants on February 14, 2020, purported to add requests for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order cancelling a notice to end tenancy for cause; and
- a monetary order for money owed or compensation for damage or loss (increase of original claim).

However, neither party submitted copies of the notices to end tenancy disputed in the amendment. M.F. noted that multiple notices to end tenancy have been received but was unable to provide any details concerning the notices. As a result, the notices to end tenancy referenced in the amendment have not been considered in this Decision.

The Tenants were represented at the hearing by M.F. The Landlord attended the hearing on her own behalf. Both M.F. and the Landlord provided affirmed testimony.

M.F. testified the notice of dispute resolution hearing documents relating to the applications, the amendment, and documentary evidence relied upon were served on the Landlord by registered mail in three packages. The Landlord acknowledged receipt of all three packages. Further, the Landlord testified that the documentary evidence relied upon was served on the Tenants by leaving a copy at the door of the Tenants' rental unit. M.F. acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary & Procedural Matters

Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' request for an order cancelling the One Month Notice, with leave to reapply for the remainder of the relief sought.

Issue to be Decided

Are the Tenants entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on April 1, 2016. Although the Tenants dispute a recent rent increase, rent in the amount of \$1,550.00 per month is currently due on the first day of the month. The Tenants paid a security deposit in the amount of \$750.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice which was served on the Tenants in person on December 27, 2019. M.F. acknowledged receipt of the One Month Notice on that date. The One Month Notice was issued on the following bases:

- Tenants are repeatedly late paying rent;
- Tenants or a person permitted on the property by the Tenants have caused extraordinary damage to the rental unit;
- Tenants have not done required repairs of damage to the rental unit.

With respect to the assertion that the Tenants are repeatedly late paying rent, the Landlord testified that the Tenants did not pay rent when due on October 1, 2019, and on January 1, February 1, and March 1, 2020. The Landlord also referred to a single instance in 2017.

In reply, M.F. did not dispute that rent has been late as alleged but indicated that only one rent payment was late at the time the One Month Notice was issued.

With respect to the assertion that the Tenants have caused extraordinary damage to the rental unit, the Landlord confirmed she does not have any documentary evidence in support of this basis for ending the tenancy. However, she testified that she completed a partial inspection in December 2019 and that the bathrooms appeared to be “unusable”. The Landlord also referred to an incident in 2018 when contractors working in the rental unit had to wear masks due to “unsanitary” conditions. Asked why she was unable to provide documentary evidence in support of extraordinary damage, she testified the Tenants do not permit entry to the rental unit and she has been advised by police not to enter the rental unit if the Tenants are not present.

In reply, M.F. testified that he dealt with contractors in 2018. He also testified that there was damage in the rental unit at the beginning of the tenancy, and some lifting of floor boards due to water damage.

With respect to the assertion that the Tenants have not completed required repairs, the Landlord testified the Tenants agreed when to re-hang closet doors and replace some appliances when the tenancy began. However, she acknowledged that the agreement was a “side agreement” and was not reduced to writing. She stated the improper installation of several appliances has led to problems but did not elaborate.

In reply, M.F. testified there was a discussion about making small repairs to previous damage in the rental unit but that there was no obligation for him to do so. He confirmed he was able to get the Landlord a deal on new appliances and did replace the stove, dishwasher, washer and dryer. The cost of the appliances was reimbursed by the Landlord. M.F. testified the appliances were not difficult to install and that there are no problems with them.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons described therein. In this case, the One Month Notice was issued on the bases identified above. I find the Tenants were served with and received the One Month Notice on December 27, 2019 and disputed it on time on December 31, 2019.

After careful consideration of the evidence and submissions of the parties, I find there is insufficient evidence before me to uphold the One Month Notice and end the tenancy. With respect to the Landlord's assertion that the Tenants have been repeatedly late paying rent, Policy Guideline #38 confirms that three late payments are the minimum number sufficient to justify issuing a notice to end tenancy. In this case, *at the time the One Month Notice was issued*, there was only one recent late payment. As a result, this basis for ending the tenancy fails.

With respect to the Landlord's assertion that the Tenants have caused extraordinary damage to the rental unit, the Landlord did not submit or refer to any documentary evidence in support. Although the Landlord provided oral testimony regarding the "unsanitary" conditions it was not enough to end the tenancy. It is also no excuse that the Landlord has elected not to exercise her right to conduct periodic inspections of the rental unit under section 29 of the *Act* and obtain further documentation. As a result, this basis for ending the tenancy fails.

With respect to the Landlord's assertion that the Tenants' have not repaired damage to the rental unit, the Landlord did not refer to any documentary evidence of an agreement or of the Tenants' failure to complete the repairs she claims are outstanding. I note the only examples provided by the Landlord concerned re-hanging closet doors and replacing appliances. The appliances have been replaced and, as noted above, there is insufficient evidence before me to conclude they were installed improperly. As a result, this basis for ending the tenancy fails.

Considering the above, I find that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

As noted under Preliminary and Procedural Matters above, the Tenants remain at liberty to reapply for the remainder of the relief sought at their discretion. This is not an extension of any statutory deadline.

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: March 4, 2020

Residential Tenancy Branch