Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, RR, LRE, FFT

Introduction

In this dispute, the tenants sought various relief under sections 41, 42, 43 (dispute of a rent increase), 47 (cancellation of a One Month Notice to End Tenancy for Cause), 65 (rent reduction for services agreed to but not provided), 70 (restrict landlord right to enter rental unit), and 72 (recovery of the filing fee) the *Residential Tenancy Act* (the "Act").

The tenants applied for dispute resolution on March 23, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 19, 2020. The tenants attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; the landlord did not attend.

Regarding service of the Notice of Dispute Resolution Proceeding package (the "package"), one of the tenants testified that they served the package by way of e-mail to the landlord on April 1, 2020. The landlord's email address was the same address that the landlord wished to received e-transfer payments of rent, thus, the tenant submitted that the landlord would have received the package. Taking into account that section 9 of *Residential Tenancy (COVID-19) Order,* MO 73/2020 *(Emergency Program Act)* prohibits personal service of documents, and based on the undisputed testimony of the tenant, I find that the landlord was served in compliance with the Act and the Order.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. Are the tenants entitled to an order cancelling a rent increase?
3. Are the tenants entitled to a rent reduction for services agreed to but not provided?
4. Are the tenants entitled to an order restricting the landlord's access?
5. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenants testified that the tenancy started on May 15, 2017, and that monthly rent was initially $1,200.00. It has since increased to $1,279.20. A security deposit of $600.00 was paid. A copy of the written tenancy agreement was submitted into evidence, and on which it is indicated that internet is included in the rent.

The landlord issued the Notice on March 19, 2020. As the landlord did not attend the hearing, though, I make no reference to the Notice except in the analysis section below.

Regarding the disputed rent increase, the landlord gave written notice on April 7, 2019 that the rent was retroactively increased from February 15, 2019 from $1,279.20 to $1,600.00. A copy of the written notice – which was not in the approved form, it should be noted – was submitted into evidence.

Regarding the reduction of rent being sought, the tenants testified that when the tenancy started, internet was included in the rent and there was no restriction on the number of devices that could be connected to the Wi-Fi. The landlord changed the password on October 27, 2019, the tenants were required to obtain the new password, and it was from that point on that the landlord has restricted the number of devices being capable of connecting to the Wi-Fi. The tenants seek a rent reduction in the amount of $100.00 until the restriction is lifted.

Regarding the request for an order restricting or suspending the landlord's right to enter the rental unit, the tenants provided the following written submission in their application, which they reiterated during testimony:

> Oct 21 2019 landlord post notice to enter on the door and request to access the premises at 9am to noon on Oct 22, 2019. We saw the notice 9:47pm on Oct 21, 2019. The night we wrote response letter post on landlord door and request another time. Next day, landlord or landlord's agent kept knock when we were

> sleeping. Landlord ignored it was an improper notice by law. Moreover, we had discover landlord or agent has been enter our rental premises when nobody home without proper notice.

Finally, the tenants seek recovery of the application filing fee of $100.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Dispute of the Notice

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

As the landlord failed to attend the hearing and prove the reason for the Notice being issued, I hereby order that the Notice is cancelled and is of no legal force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Dispute of Rent Increase

Sections 42(2) and 42(3) of the Act states as follows:

> (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.

In this case, the landlord did neither. Indeed, the landlord in fact attempted to apply a retroactive rent increase, which is illegal. Moreover, the notice of increase (which itself does not comply with the Act), is not in the approved form.

Therefore, I order that the rent increase is of no force or effect. The rent is $1,279.20 and shall remain as so until and unless such time that the landlord provides notice of rent increase that complies with sections 41, 42, and 43 of the Act.

Reduction of Rent

The landlord provides internet as part of the rent, as per the tenancy agreement. While the tenancy agreement is silent as to the number of devices that may be connected to the internet, that the landlord has not placed a restriction on the internet from May 2017 until October 2019 establishes that an unwritten but implied “no restriction on number of devices” forms part of the agreement. As such, the landlord does not have a legal right to place restrictions on the number of devices that may be connected to the internet.

Section 27(1)(b) of the Act states that “A landlord must not terminate or restrict a service or facility if [. . .] providing the service or facility is a material term of the tenancy agreement.” That the internet (without restrictions) is part of the rent and is in the tenancy agreement, I conclude that it is a material term of the tenancy agreement.

Pursuant to section 65(1)(f), I hereby order that the monthly rent is, effective June 1, 2020, reduced by $100.00 to $1,179.20. Further, this rent reduction shall remain in effect until the landlord removes the restrictions on the number of devices that may be connected to the internet.

Order Restricting or Suspending Landlord’s Access

Section 29 of the Act speaks to a landlord’s right to enter a rental unit:

> (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> > (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> >
> > (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> >
> > > (i) the purpose for entering, which must be reasonable;
> > >
> > > (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 70 of the Act states the following:

(1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 *[landlord's right to enter rental unit restricted]*.

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

(a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

(b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Based on the undisputed testimony of the tenants, I find that the landlord or their agent entered the rental unit without proper notice or permission, which is in clear breach of section 29 of the Act. Therefore, I order that the landlord must comply with section 29 of the Act in respect of entering the rental unit.

I further order and authorize that the tenants may, if they wish, change the locks, keys or other means that allow access to the rental unit. And, that the landlord is prohibited from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, I grant their claim for reimbursement of the filing fee in the amount of $100.00.

I order that the tenants may make a one-time deduction of $100.00 from any future rent in full satisfaction of this claim. (This deduction is separate and apart from the previously ordered rent reduction.)

Conclusion

I grant the tenants' application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 19, 2020

Residential Tenancy Branch