



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance- Section 62;
3. An Order restricting the Landlord’s access - Section 70; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was witnessed being served with the application for dispute resolution and notice of hearing (the “Materials”) in person at 9:30 a.m. on August 7, 2020 in accordance with Section 89 of the Act. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of a notice to end tenancy?

Are the Tenants entitled to an order for the Landlord’s compliance?

Are the Tenants entitled to an order restricting the Landlord’s access?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started approximately 12 years ago. Rent of \$800.00 was payable on the first day of each month until the Landlord increased the rent to \$1,000.00 as of January

1, 2019. The Landlord did not obtain the Tenants' written agreement to this increase and did not serve the Tenants with a notice of rent increase. The Tenants occupy a basement suite in a house where the Landlord resides in the upper part of the house.

The Landlord has been calling the Tenants repeatedly at 4:00 and 5:00 a.m. in the morning, swearing and demanding a rent increase. The Landlord called 21 times in June 2020 alone. After the police were called and spoke with the Landlord the police advised the Tenants to block the Landlord's phone number. This did not deter the Landlord. After the police attendance, the Landlord then started repeatedly coming to their door demanding a rent increase. In the past month the Landlord has been at the Tenants' door three time every week.

The Tenants seek an order that the Landlord comply with the Act in relation to rent increases, attending at their unit and threatening to end their tenancy. Over the length of the tenancy the Landlord has never attended the unit to make repairs or to inspect the unit. The Tenants have not been given any notice to end tenancy from the Landlord in writing or on the approved RTB form.

Analysis

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 44(1) of the Act provides that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

- (ii)section 46 [*landlord's notice: non-payment of rent*];
- (iii)section 47 [*landlord's notice: cause*];
- (iv)section 48 [*landlord's notice: end of employment*];
- (v)section 49 [*landlord's notice: landlord's use of property*];
- (vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii)section 50 [*tenant may end tenancy early*];
- (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c)the landlord and tenant agree in writing to end the tenancy;
- (d)the tenant vacates or abandons the rental unit;
- (e)the tenancy agreement is frustrated;
- (f)the director orders that the tenancy is ended;
- (g)the tenancy agreement is a sublease agreement.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a)be signed and dated by the landlord or tenant giving the notice,
- (b)give the address of the rental unit,
- (c)state the effective date of the notice,
- (d)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e)when given by a landlord, be in the approved form.

As the Tenants have not been given a notice to end tenancy on an approved form, I find that there is no such notice to dispute and I dismiss the claim to cancel a notice to end tenancy. The tenancy continues until ended by either Party in accordance with the Act. Based on the undisputed evidence of the Tenant's I find that the Landlord has been

attempting to evict the Tenants in a manner that is not allowed under the Act. **I order the Landlord to immediately refrain from verbally evicting the Tenants and to comply with the Act if the Landlord has a valid reason to evict the Tenants.**

Section 29 of the Act provides that a landlord's right to enter a rental unit is restricted as follows:

(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).

Base on the undisputed evidence of the Tenants I find that the Landlord has been attending the unit without complying with the Act as set out above. **I order the Landlord to immediately comply with the Act and to only attend at the Tenants' unit after having served a notice for such entry or to post a notice for entry.** I restrict the Landlord's right of entry to emergency situations where the entry is necessary to protect life or property, where the tenants have abandoned the rental unit, or for an entry to inspect the unit. Given that the Landlord has not entered the unit to

make repairs or to inspect the unit over the length of the tenancy and considering the undisputed evidence of the Landlord's behavior in ignoring the police and its obligations under the Act, **I order the Landlord to restrict its entry to the unit for inspection purposes to once a year, with the earliest inspection occurring no sooner than September 1, 2021.**

Section 42 of the Act provides for the timing and notice to rent increases as follows:

(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.

Section 43 of the Act provides for the amount of rental increase as follows:

(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.

Based on the undisputed evidence of the Tenants I find that the Landlord has been seeking a rent increase that is not in accordance with the Act. **I order the Landlord to cease oral requests for a rent increase and to comply with the Act should the Landlord be entitled to a rental increase.** Noting that the Tenants have given undisputed evidence of an illegal rent increase for January 1, 2019 but have not sought an order in relation to that rent increase, the Tenants remain at liberty to make an application for dispute resolution to dispute the past rent increase.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a)reasonable privacy;
- (b)freedom from unreasonable disturbance;
- (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the undisputed evidence of the Tenants I find that the Landlord, by repeatedly coming to the unit, repeatedly calling the Tenants, repeatedly threatening eviction without proper notice, and repeatedly seeking a rent increase, has been breaching the Tenants' right to quiet enjoyment to the point of harassment. **I order the Landlord to immediately refrain from breaching the Tenants' right to quiet enjoyment of their unit.** Should the Landlord continue this behavior or fail to comply with any of the additional orders set out above the Tenants have leave to reapply for compensation.

As the Tenants have been mostly successful with their application, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and **I order the Tenants to deduct this amount from future rent payable.**

Conclusion

The Landlord is ordered to:

- immediately refrain from verbally evicting the Tenants and to comply with the Act if the Landlord has a valid reason to evict the Tenants;
- immediately comply with the Act and to only attend at the Tenants' unit after having served a notice for such entry or to post a notice for entry;
- restrict its entry to the unit for inspection purposes to once a year, with the earliest inspection occurring no sooner than September 1, 2021;
- cease oral requests for a rent increase and to comply with the Act should the Landlord be entitled to a rental increase; and
- immediately refrain from breaching the Tenants' right to quiet enjoyment of their unit.

The Tenants are ordered to deduct \$100.00 from future rent payable.

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: August 20, 2020

Residential Tenancy Branch