



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, RP, OLC, FFT

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the "male tenant" and the "female tenant child" did not attend this hearing, which lasted approximately 24 minutes. The female tenant ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The female tenant confirmed that she had permission to represent the male tenant, who is her husband, and the female tenant child, who is her minor daughter, at this hearing (collectively "tenants").

The tenant stated that she served the landlord with the tenants' application for dispute resolution hearing package by way of personally giving a copy to the landlord's female agent on October 7, 2020. The tenants provided a signed hand delivery receipt, dated October 7, 2020, confirming the above, from the landlord's agent. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenants' application on October 7, 2020, by way of leaving a copy in person with the landlord's agent.

The tenant did not provide any testimony regarding the tenants' claim for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement. Therefore, this portion of the tenants' application is dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to an order regarding a disputed additional rent increase?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order requiring the landlord to complete repairs to the rental unit?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on December 14, 2018. Monthly rent in the current amount of \$2,300.00 is payable on the 15th day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The tenants seek an order to cancel the landlord's notice to end tenancy. The tenant stated that she received an email, dated October 2, 2020, asking the tenants to move out of the rental unit, so that the landlord could move in. The tenants provided a copy of this email. She claimed that she did not receive a valid 1 Month Notice from the landlord on the approved Residential Tenancy Branch ("RTB") form. She said that the landlord later told her that he did not want to move into the rental unit anymore, he just wanted 12 post-dated rent cheques from the tenants.

The tenants seek to dispute the landlord's illegal rent increase. The tenant stated that it became effective on December 15, 2019, where the tenants were asked by the landlord to pay \$100.00 extra per month, which they did, or they were told to move out. She said that she did not receive a notice of rent increase on the approved RTB form with three months' notice from the landlord.

The tenants seek an order for the landlord to repair the water temperature in the shower at the rental unit. The tenant maintained that there is a sudden change in temperature, where it becomes very hot, without warning, since February 2020. She said that it burned the female tenant child, who had a red back, and reported it to the tenant. The tenant claimed that she reported the issue to the landlord over the phone in February 2020 and was told it was a strata issue. She explained that she emailed the landlord on May 4, 2020. She said that the building manager personally inspected the issue on May 7, 2020 and told her that it was not a strata issue, but the landlord had to fix it with a new part. She said that this building manager emailed the landlord on May 7, 2020, so she called the landlord the same day, and was told that he would get a handyman to fix it, but no one ever showed up.

Analysis

1 Month Notice

Sections 47 and 52 of the *Act*, state in part (my emphasis added):

47 *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

...

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

52 **In order to be effective, a notice to end a tenancy must be in writing and must**
 (e) when given by a landlord, be in the approved form.

The tenants did not receive a 1 Month Notice in the RTB approved form, as required by sections 47 and 52 of the *Act*. The tenants only received an email from the landlord asking them to move. Therefore, I find that there is no valid 1 Month Notice to end this tenancy and the tenants are not required to vacate the rental unit.

I find that this tenancy continues under the terms of the original tenancy agreement until it is ended in accordance with the *Act*. Accordingly, the tenants' application to cancel the 1 Month Notice, is dismissed without leave to reapply, as they did not receive a valid 1 Month Notice from the landlord.

Rent Increase

I find that the tenants agreed to a rent increase from the landlord, effective on December 15, 2019, almost one year prior to this hearing on December 11, 2020. Although they did not receive a three-month written notice on the approved RTB form with the allowable rent increase amount under the *Regulation*, I find that the tenants agreed to a higher amount of \$100.00 more per month, since they paid it for a year and raised no issue with it.

The new rent increase was implemented one year into the tenants' tenancy, after their rent was first established. The tenant agreed that she disputed the rent increase only when the landlord sent the tenants an email attempting to evict them, because the tenants were upset. The tenants' application to dispute an additional rent increase is dismissed without leave to reapply.

Repairs

I find that the tenants provided undisputed evidence that the water temperature in the shower at the rental unit is too hot and changes suddenly. I find that the tenant notified the landlord, had an inspection by the building manager, and was told that it was not a strata issue, so the landlord had to fix the issue, which still has not been done.

I order the landlord, at his own cost, to hire a certified, licensed professional to inspect by December 31, 2020 and if recommended by the professional repair by January 15, 2021, the water temperature in the shower at the rental unit, to ensure that it is safe, consistent and in proper, working order for the tenants to use.

As the tenants were partially successful in this application, I find that they are entitled to recover the \$100.00 application filing fee from the landlord.

Conclusion

This tenancy continues under the terms of the original tenancy agreement until it is ended in accordance with the *Act*.

I order the landlord, at his own cost, to hire a certified, licensed professional to inspect by December 31, 2020 and if recommended by the professional repair by January 15, 2021, the water temperature in the shower at the rental unit, to ensure that it is safe, consistent and in proper, working order for the tenants to use.

I order the tenants to deduct a one-time amount of \$100.00 from future rent owing to the landlord for this rental unit and this tenancy, in full satisfaction of the monetary award for the filing fee.

The remainder of the tenants' application is dismissed without leave to reapply.

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: December 11, 2020

Residential Tenancy Branch