Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, MNDCT, FFT

Introduction

The tenants applied for an order to cancel a notice to end tenancy for landlord's use of property (the "Notice") under section 49 of the *Residential Tenancy Act* (the "Act"), and for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46 of the Act. In addition, they seek compensation for overpaid rent pursuant to section 67 of the Act, and, compensation to recoup the cost of the application filing fee under section 72 of the Act.

Both tenants, both landlords, and a witness (a family member) for the landlords, attended the hearing on April 16, 2021. The hearing was held by teleconference. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Preliminary Issue 1: 10 Day Notice

The tenants' application included a claim to dispute a 10 Day Notice that was apparently served on them on or about March 4, 2021. However, neither party submitted a copy of the 10 Day Notice into evidence.

I can think of no more important document to submit into evidence than the very document that a party wishes to dispute. In this case, a copy of a notice to end tenancy is crucial so that I may determine if it complies with sections 46 and 52 of the Act. In the absence of the notice, I am unable to make any findings in respect of that notice and its compliance with the Act.

Given that there is no copy of the 10 Day Notice before me, I must dismiss this aspect of the tenants' application, with leave to reapply. I make no findings of fact or law in respect of the 10 Day Notice.

Preliminary Issue 2: Notice to End Tenancy for Landlord's Use of Property

A landlord may end a tenancy under section 49(3) of the Act, which states that

> A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In order to end a tenancy in this manner, the landlord must give a notice to end tenancy in compliance with section 49(2)(b) of the Act. Most importantly, section 49(7) of the Act states that "A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* [. . .]."

Section 52 of the Act states that (my emphasis underlined):

> 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.

The "notice" used by the landlords in this dispute consists of a one-page typewritten letter. While most of the information contained within the letter is clear and understandable, the vital missing factor is that the notice is not in the approved form (#RTB-32) titled "Two Month Notice to End Tenancy for Landlord's Use of Property".

As the landlords' notice to end the tenancy under section 49 of the Act does not comply with this most requirement that it be in the approved form, I thus find that the notice has no legal force or effect. The tenancy shall continue until it is ended in compliance with the Act. Given that I have found the notice to be of no force or effect, I need not address the grounds on which it was issued (that is, that the landlord's son is to occupy the rental unit).

It is not lost on me that the landlords, and specifically the son (J.K.), have a rather stressful and difficult family issue involving a wife who has recently undergone a C-section. And, that the family issue is apparently best solved by the son and his wife occupying the rental unit. J.K.'s frustration was quite evident throughout the hearing, and he appeared to have some difficulty in accepting that the tenants had a right to dispute the notice to end tenancy. I am not without sympathy for the family's position.

However, landlord-tenant legal relationships are legally binding contractual relationships under the Act and the common law. They are not, and cannot be, treated as mere inconveniences to one party when personal or family issues arise. There is a process under the law that must be followed when one party wishes to end a tenancy.

The only remaining issues to be dealt with, then, are the matter of the tenants' claim for compensation and the issue of whether they are entitled to recover the filing fee cost.

Issues

1. Are the tenants entitled to compensation?

2. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the two remaining issues of this dispute, and explain the decision, is reproduced below.

The tenants testified that the tenancy began October 1, 2017 and that monthly rent was initially (and ought to be) $1,800.00. The tenants paid a security deposit of $900.00. Neither party produced a copy of any written tenancy agreement.

In or around October 2019 the parties had a discussion whereby the landlords intended to increase the rent to $1,845.00. The tenants testified that they agreed to this increase, but that the landlords "never filed any paperwork."

At some point, the tenants purchased and obtained a "weed machine." This contraption is apparently a self-contained marijuana growing vessel. The landlords apparently did not care for the weed machine for various reasons, and there was a disagreement between the parties about it.

The deteriorating situation between the parties reached its apex in January 2021 with the issuing of the notice to end tenancy (which, the tenants argue, is driven by the landlords' desire to rid themselves of the tenants and their weed machine, and not, they say, for the stated purpose of having the landlord's son and wife move into the rental unit). At this time, in early 2021 that is, the tenants decided that they should *not* have to pay the higher rent after all, and instead started paying the original rent of $1,800.00.

The landlords testified that everyone, including the tenants, had "adequate notice" about the rent increase. The landlords' witness, who apparently handled the rent collection side of the family's business, testified that there was some sort of documentation concerning the rent increase. None of this documentation was on file, however.

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.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

At the outset, it is worth noting that the tenants are not bringing an application to dispute a rent increase, as would be done under sections 41 through 43 of the Act. Rather, they bring a claim for compensation for rent that they say was improperly overcharged.

Neither party disputed that the tenants began paying $45.00 more in rent in October 2019. The parties also did not dispute the fact that everyone accepted the higher rent. Indeed, and this is important: the tenants themselves testified that "we agreed" to the rent increase. The parties disagree, however, as to whether the landlords issued or provided any "paperwork." Paperwork involved in a rent increase under the Act would ordinarily include a notice of rent increase issued under section 42(2) of the Act. Given the landlords' apparent unfamiliarity with the Act, including their failure to use the proper notice to end the tenancy, and the remark that they are not "professional landlords," I think it it unlikely that they ever provided or produced the necessary paperwork.

That said, the tenants nonetheless agreed to the $45.00 rent increase, and, in fact, paid the increased rent without any apparent objection for a period of 13 months. For this reason, I find that the tenants are prevented from claiming compensation on the basis of a legal principle known as *estoppel.*

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, the tenants' failure to object to paying $45.00 more in monthly rent for a period of over a year, and considering their agreement to pay this higher amount at the outset, created a pattern of the tenants' failing to assert their right of not having to pay the additional rent. For this reason, I decline to award the tenants any compensation for the amount that they have willingly paid for 13 months. Thus, this aspect of their application is dismissed without leave to reapply.

That said, this application, and the claim for the higher rent (which, by all accounts was not established to have been correctly done under section 41 of the Act), shall constitute written notice that the tenants intend to proceed on the basis that monthly rent is $1,800.00. Monthly rent is, I order, to be in the amount of $1,800.00, and rent may not be increased except in strict accordance with the Act and the regulations.

. . .

Finally, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants were successful in their application to quash a non-compliant notice to end tenancy, I award them $100.00.

Pursuant to section 72(2) of the Act, I order and authorize the tenants to make a one-time deduction of $100.00 from a future rent payment in full satisfaction of the above-noted award.

Conclusion

The tenants' application, in respect of their claim for compensation, is dismissed without leave to reapply. The remaining outcomes are explained within the preliminary sections of this decision.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 19, 2021

Residential Tenancy Branch