



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: CNR FFT
Landlord's application: OPU-DR, MNU-DR, FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the landlord and tenant seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession, for a monetary order in the amount of \$3,104.00 for unpaid rent and rent arrears and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and to recover the cost of the filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Due to the tenants confirming that they vacated the rental unit on June 30, 2021, I find the tenants' application is now moot, and is dismissed without leave to reapply. I have made this decision as the tenants decided to vacate the rental unit between filing their application on June 4, 2021 and the hearing date of October 4, 2021. I do not grant the tenants the filing fee as their application is now moot. The hearing continued with consideration of the landlord's application. As the landlord confirmed that they have obtained possession back of the rental unit, I find the landlord no longer requires an order of possession and will therefore only deal with the landlord's monetary claim.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. The most recent tenancy agreement began on July 1, 2020 and indicates that \$1,850.00 in rent is due on the first day of each month. The tenancy agreement states under clause 7, the following:

7. **RENT AND FEES.** Rent in full must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date or dates.

Rent	\$ <u>1850.-</u>	per <u>1</u> month <input type="checkbox"/> week <input type="checkbox"/> other _____
Parking Fee(s)	\$ _____	(Describe) _____
Other Fee(s)	\$ _____	(Describe) _____
TOTAL RENT AND FEES	\$ <u>1850.-</u>	

Subject to clause 19, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$ 300 per month. The landlord's acceptance of any additional tenant or occupant does not otherwise change this Agreement or create a new tenancy.

The landlord stated that they are seeking \$3,104.00 comprised as follows:

1. \$300.00 owing for extra occupant for March 2021
2. \$300.00 owing for extra occupant for April 2021
3. \$300.00 owing for extra occupant for May 2021

4. \$2,104.99 owing for unpaid rent of \$1,804.00 plus extra occupant of \$300.00 for June 2021
5. Filing fee of \$100.00

There is no dispute that the tenants brought a former tenant of the landlord, K (K) and their child as new occupants as of May 1, 2019. The landlord testified that the tenants never asked the landlord if K and their child could move in. The tenants claim that permission was granted verbally but not in writing by the landlord. The landlord did confirm that they learned of K and their child moving in with the tenants from K directly in April of 2019.

The landlord presented a document dated in January 2020, which was hand-delivered on January 22, 2021 (January 2021 Letter), which states in part the following:

Please be advised due to increasing costs and additional wear and tear of the premises we are activating our right under clauses 7 and 19 of the Lease to increase the rent by \$300. per month for the additional occupant. I'm sure you will remember your original request which was to have a student come and live with your family in order to alleviate your costs while Wes was unemployed. The verbal agreement we made was that you might have a student but not more than one. Times have changed for all of us and we must now assert our right to increase the rent.

The January 2021 Letter also states:

As of February 1st, 2021, the rent for [address of rental unit] will be \$2,104. per month, payable on the first of the month...

[Reproduced as written except for anonymizing address]

The tenants claim that they responded on the landlord in writing on January 26, 2021; however, that written response was not submitted in evidence for consideration. There is no dispute; however, that the landlord did not enforce the extra \$300.00 occupant amount between July 1, 2020 and February 1, 2021.

The tenants testified that the landlord is only attempting to enforce the extra \$300.00 occupant amount due to the tenants having to rely on the CERB benefit and the rent subsidy related to COVID and that for the prior 8 years, the tenants were given no warnings, had no issues, and had not paid their rent late. The tenants stated that they believe the landlord was looking for a way to get the tenants out of the rental unit as the landlord knew they could not afford an extra \$300.00 per month for Kevin and their child. The tenants also stated that the landlord was critical of them for not having three

months of living expenses saved in their account. The landlord stated that they were given professional advice to advise the tenants that rent was due and owing and that this was the balance owing and that landlord followed the advice they received.

The tenants questioned why the landlord did not enforce the extra occupant amount until February 2021 when the latest tenancy agreement began on July 1, 2020 and they were never charged that amount until many months later.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Firstly, there is no dispute that the most recent tenancy agreement which came into effect on July 1, 2020 contained a clause which states:

Subject to clause 19, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$300.00 per month. The landlord's acceptance of any additional tenant or occupant does not otherwise change this Agreement or create a new tenancy.

Having considered the testimony of the parties, and in particular the tenants questioning why the landlord took so many months before suddenly enforcing the extra occupant amount of \$300.00, I find that *Estoppel* applies.

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 other words, in this case, the tenant established a pattern of paying the rent amount of \$1,804.00 for the months of July, August, September, October, November and December of 2020, plus January of 2021 before receiving a letter from the landlord stating that rent will now include the extra occupant amount of \$300.00 as of February 1, 2021. I find the evidence before me and on a balance of probabilities supports that the tenants had the right to rely on the rent not increasing by \$300.00 as the landlord failed to enforce the extra \$300.00 amount for the first 7 months that the \$300.00 extra occupant term was in place. Therefore, I find the landlord may not now try to strictly enforce their right under the tenancy agreement over 7 months later by claiming for March, April, May and June of 2021 amounts of \$300.00 for an extra occupant.

As a result, I find that *Estoppel* applies to the extra \$300.00 occupant amount and is dismissed due to insufficient evidence, without leave to reapply.

For unpaid June 2021 rent of \$1,804.00, I find the tenants breached section 26 of the Act, which requires that \$1,804.00 be paid on June 1, 2021, which the tenants failed to do. Therefore, I grant the landlord **\$1,804.00** for unpaid June 2021 rent.

As the landlord's application was mostly successful, I grant the landlord the **\$100.00** for the filing fee pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of **\$1,904.00** comprised of \$1,804.00 for unpaid June 2021 rent, plus the \$100.00 filing fee. As the parties confirmed that the security deposit and pet damage deposits have already been returned to the tenants by the landlord, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$1,904.00**.

Conclusion

The landlord's claim is partially successful. The landlord is granted a monetary order in the amount of \$1,904.00 as noted above. This order must be served on the tenants by the landlord and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenants are reminded that they could be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 6, 2021

Residential Tenancy Branch