



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, OLC, MNDCT, RP, RR, LRE, PSF, DRI, FFT
CNR, CNL, DRI, MNDCT, LRE, OLC, RR, RP, FFT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant, which have been joined to be heard together.

The first application seeks the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlords make repairs to the rental unit or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- disputing a rent increase; and
- to recover the filing fee from the landlords for the cost of the application.

The second application of the tenant seeks:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for the landlords' use of the property;
- disputing a rent increase;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;

- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property; and
- to recover the filing fee from the landlords.

The tenant and both named landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During questioning, the parties had to be reminded that cross examination is not an opportunity for the parties to argue about the testimony given.

The Rules of Procedure specify that multiple applications contained in a single application must be related. I found that the primary applications deal with notices to end the tenancy and rent increases, and the hearing focused on those matters.

The landlords have provided evidentiary material to the Residential Tenancy Branch and to the tenant. The tenant did not dispute that and has not provided any evidence. All evidence of the landlords has been reviewed and all relevant evidence is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2021 was given in accordance with the *Residential Tenancy Act*?
- Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?
- Has the tenant established that rent has been increased contrary to the law?

Background and Evidence

The first landlord (SJ) testified that this month-to-month tenancy began on May 1, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 is payable on the 1st day of each month. At the outset of the tenancy the landlords

collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords reside in the upper level of the home.

The landlord further testified that on September 2, 2021 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the door of the rental unit, and a copy has been provided for this hearing. It is dated September 2, 2021 and contains an effective date of vacancy of September 15, 2021 for unpaid rent in the amount of \$400.00 that was due on September 1, 2021.

The landlords have not increased the rent, and the tenant has fallen into arrears of rent the amount of \$400.00 for September, 2021; \$600.00 for October, 2021; and \$50.00 for each of the months of November and December, 2021 as well as January, 2022.

The second landlord (HJ) testified that the landlord told the tenant that the landlord would reimburse the tenant for work that the tenant did for the landlord, but never said to take any amount off the rent. The tenant has been holding back since signing the tenancy agreement in May, 2021.

In September, 2021 the tenant paid \$500.00 on the 1st of the month, leaving \$400.00 outstanding. On October 1, 2021 the tenant paid \$600.00, leaving arrears of \$300.00 and told the landlord that the tenant was withholding 5 months. In November, December and January, the tenant paid \$850.00 for each of those months, bringing the total arrears of rent to \$850.00.

The tenant testified that there was ongoing construction which started in late June, 2021 without notice to the tenant. The tenant works till 10:00 at night, and long shifts. The tenant was severely impacted by noise, and the landlord said he would ensure quiet time for sleeping, but nothing was said about rent.

The tenant texted the landlord stating that the tenant had to sleep and the landlord promised no more noise. However, banging started at 8:00, and the landlord apologized and said he'd take care of it. The tenant ended up booking time off work.

The landlord also gave a Two Month Notice to End Tenancy for Landlord's Use of Property on October 1, 2021 which was signed by the landlord on September 30, 2021 and contains an effective date of vacancy of November 30, 2021. A copy of the Notice has not been provided as evidence for this hearing by either party.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Since neither party has provided a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, I cannot be satisfied that it was given in the approved form, and I cancel it.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*.

A tenant may not withhold rent; a tenant must pay the rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement.

I have also reviewed the tenancy agreement, and it's clear that rent is \$900.00 per month. I cannot find that any illegal rent increase has been imposed, nor any reason that would justify not paying the rent in full. The tenant has not provided any evidence, and has not satisfied me that the tenant was justified in failing to pay the rent, and I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The law states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement was not dealt with in this hearing, and I dismiss that portion of the applications with leave to reapply.

Since the tenancy is ending, dismiss the balance of the tenant's applications without leave to reapply.

Since the tenant has not been successful with the applications, the tenant is not entitled to recover the filing fee from the landlords.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2021 is hereby cancelled.

The balance of the tenant's applications are hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: January 20, 2022

Residential Tenancy Branch