



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR, OLC, MNDCT, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenants. On December 30, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On January 9, 2022, the Tenants made a second Application for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “*Notice*”) pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Due to technical difficulties, I attended the hearing late, at 9:37 AM. Both Tenants attended the hearing. The Landlord attended the Hearing as well, with C.W. attending as co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Tenant A.H. advised that she served two, separate Notice of Hearing packages to the Landlord by registered mail on January 13, 2022, and the Landlord confirmed that she received these packages on January 18, 2022. The Landlord claimed that C.W. was not served these packages despite being an owner of the rental unit. As both the Landlord and C.W. were present at the hearing, as the Landlord confirmed that she informed C.W. of the Tenants' Applications in January 2022, and as there was sufficient time to prepare for the hearing, I find that there is no prejudice to the Landlord or C.W. As such, I am satisfied that the Landlord and C.W. have been duly served the Notice of Hearing packages.

A.H. advised that she served their evidence to the Landlord with the Notice of Hearing packages. The Landlord confirmed that she received some evidence in the Notice of Hearing packages; however, approximately 25-30 pages of evidence was served to her on March 8, 2022, and she stated that she was not prepared to proceed with this late evidence. A.H. then stated that they "probably" served the additional evidence late. I notified the parties that it would not be an efficient use of hearing time to go through every piece of evidence to determine which documents were served on time or not. I advised the Landlord to inform me of any documentary evidence that the Tenants referred to during the hearing that was served late, and I would note this and not consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenants on March 5, 2022 by posting it to the Tenants door. The Tenants confirmed that they received this evidence. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, they were notified that this hearing would primarily address the most pressing issue, which was related to the Notice to end tenancy, and that the other claims were dismissed with leave to reapply.

The Landlord advised that she mistakenly issued the Notice and that it was not valid. The Tenants advised that they would be moving out on March 31, 2022 and that the Notice was a moot point, despite disputing it initially. As such, the focus of the hearing turned to the claims the Tenants made in their initial Application. As the Tenants stated that they were giving up vacant possession of the rental unit on March 31, 2022, the claims for a repair Order and an Order to comply were moot points. Consequently, A.H.

stated that their claims for monetary compensation were the only issues to be addressed in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on June 1, 2021, that rent was established at \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

The Landlord testified that the Notice was served to the Tenants by hand on or around December 31, 2021. The reason the Landlord served the Notice is because the “Tenant is repeatedly late paying rent.” The Notice indicated that the effective end date of the tenancy was January 31, 2022.

As noted above, the Landlord confirmed that she mistakenly served this Notice and that the ground that she served the Notice was not valid. C.W. advised that the Landlord should not be responsible for the filing fee as the Landlord sent the Tenants a text message on January 2, 2022 informing them that the Notice was served in error and that it was being withdrawn. While the Landlord did not receive any signed agreement from the Tenants to withdraw the Notice, it is her belief that the Tenants’ texts confirmed this agreement.

P.W. confirmed that they received the Landlord's text about withdrawal of the Notice, and that they thanked the Landlord for this message. However, they did not agree to withdraw it and they disputed the Notice to protect themselves.

Regarding the Tenants' claims for compensation, A.H. advised that they were seeking compensation in the total amount of **\$350.00** because there was a drafty window that the Landlord did not repair adequately. This led to an increase in their heating bill and an inability to use the rental unit for a time during the winter months. She testified that she notified the Landlord of the issue on August 30, 2021 and that the Landlord applied a film to the window on or around September 20, 2021; however this did not correct the issue. They then requested that this be addressed on November 28, 2021 and the Landlord sent in a window repair person to investigate the problem.

She stated that the Landlord acknowledged that there was a problem according to a December 9, 2021 text message, and indicated that she could not afford the \$2,000.00 cost to fix it. A.H. referred to their documentary evidence to support their position.

P.W. denied that she acknowledged that there was an issue with the window. She confirmed that she had a contractor apply a custom-made film to the window and that it would not have been possible for a draft to enter the rental unit. As well, she stated that a building inspector determined that there were no issues with the rental unit. She referenced documentary evidence to support the position that she addressed the Tenants' request, and that there were no problems with the window. She stated that she offered the Tenants a space heater or thermal curtains, just in case; however, the Tenants declined this offer. As well, she testified that Tenant C.E. texted her to inform her that there were no issues with a draft or heat.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Given that the Landlord's One Month Notice to End Tenancy for Cause of December 31, 2021 was admittedly issued in error, this Notice is cancelled and of no force or effect. With respect to the Landlord's position that she should not be responsible for the filing fee, I note that Policy Guideline #11 states the following:

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

As there is no evidence of signed consent from the Tenants agreeing to withdraw this Notice, I am not satisfied that they agreed to this. Furthermore, had they agreed to this, it would not make sense that they then disputed the Notice. As the Notice was served in error, I am satisfied that the Tenants were successful in their claim. Consequently, I find that they are entitled to recover the **\$100.00** filing fee paid for this Application.

With respect to the Tenants' claims for compensation in the amount of \$350.00, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, I am not satisfied that the Tenants have submitted sufficient evidence to support their position that there was still

an issue with the window after the Landlord was informed by the Tenants that they believed there was still a problem. As such, the Tenants' initial Application is dismissed in its entirety.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution made on December 30, 2021 without leave to reapply.

However, with respect to the Tenants' Application for Dispute Resolution of January 9, 2022, I hereby Order that the One Month Notice to End Tenancy for Cause in relation to this Application, dated December 31, 2021, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

In addition, the Tenants are provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 21, 2022

Residential Tenancy Branch