



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled to convene at 11:00 a.m. on February 2, 2023 by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause, and for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

One of the tenants attended the hearing with a support person and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlords joined the call.

The tenant advised that the landlords were served with the Notice of Dispute Resolution Proceeding and all evidentiary material by registered mail on September 29, 2022 and has provided a Canada Post cash register receipt bearing that date, and I am satisfied that the landlords have been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the notice to end the tenancy be cancelled?
- Has the tenant established that the landlords should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 8, 2021 and is now a month-to-month tenancy and the tenant still resides in the rental unit. A copy of the

tenancy agreement has been provided for this hearing and it shows that the fixed term expires on October 1, 2021, which is prior to the commencement of the tenancy. However, it also states that at the end of the fixed term, the tenancy continues on a month-to-month basis.

The tenancy agreement also specifies rent in the amount of \$1,700.00 payable on the 31st day of each month. The tenant testified that there are no rental arrears and rent is paid on time, prior to the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$850.00 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 tenancy agreement also specifies that electricity is included in the rent.

The landlords have advised the tenant that rent is increased by 2% to \$1,735.00 effective November 1, 2022 and the tenant complied, but no Notice of Rent Increase was provided to the tenant. The landlords also advised the tenants that the tenants are to pay 40% of the electricity. The tenants seek an order reducing the rent back to the original amount of \$1,700.00 per month and that electricity is included in the rent.

The tenants also seek an order that the landlords provide the tenant with quiet enjoyment of the rental unit so the tenants and the tenant's child are not disturbed.

The landlords have served the tenants with 2 documents entitled "Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities #RTB-34" and copies have been provided for this hearing, but not with a notice to end the tenancy.

The tenants also seek an order that the landlords may not increase the rent or change the terms of the tenancy agreement without the written consent of the tenants, or end the tenancy except as provided by the *Residential Tenancy Act*.

Analysis

Firstly, a landlord may not increase rent except as provided by the *Act* and the regulations, which require the landlords to serve the tenants with a Notice of Rent Increase in the approved form. The law also requires that the increase must be in the amount set out in the regulations, and that the Notice of Rent Increase be served 3 months prior to the date the increase takes effect. In this case, I accept the undisputed testimony of the tenant that the landlords requested a \$35.00 per month increase without serving a Notice of Rent Increase in the approved form, and that the tenant has

complied by paying the \$35.00 increase for the months of November and December, 2022 as well as January and February, 2023. I order that the tenants be permitted to reduce rent for a future month by the difference of \$140.00. I further order that the landlords may not increase the rent without complying with the law, and that rent is \$1,700.00 per month until it is raised in accordance with the *Act* and the regulations.

I further order the landlords to comply with the tenancy agreement which states that electricity is included in the rent and the tenant is not responsible for any portion of electric bills.

The law also requires a landlord, in order to end a tenancy, to serve a notice to end the tenancy in the approved form. The documents served to the tenants are not notices to end the tenancy in the approved form, and are not enforceable. The landlord may not end the tenancy for unpaid utilities that are included in the rent or unpaid rent unless the tenant fails to pay rent when it is due, and there is no evidence of that.

I further order that the landlords comply with the *Act* and may not change the terms of the tenancy agreement without the written consent of the tenant.

The tenant also seeks an order that the landlords provide the tenants with quiet enjoyment of the rental unit, and that noises from the landlords' residence wakes the tenant's child who cannot get back to sleep. I accept that undisputed testimony and I order that the landlords provide the tenants with quiet enjoyment, failing which the tenants will be at liberty to apply for monetary compensation for the landlords' failure to comply with the *Act* and this order.

Conclusion

For the reasons set out above, I hereby order the landlords to comply with the *Act* and the tenancy agreement as follows:

1. the landlords may not increase rent unless the landlords have served the tenants with a Notice of Rent Increase in the approved form at least 3 months prior to any increase taking effect, and any such increase must not be more than the amount allowed by the regulations;
2. the landlords may not change any of the terms of the tenancy agreement without the written consent of the tenants;
3. electricity, heat, and water and all other terms as set out in the tenancy agreement are included in the rent, and the landlords may not require the tenants

to pay for any services that are included in the rent according to the tenancy agreement;

4. the landlords may not require the tenants to pay for any electricity or other services or facilities that are included in the tenancy according to the tenancy agreement;
5. the landlords may not end the tenancy unless the landlords serve the tenants with a notice to end the tenancy in the approved form;
6. the landlords must provide the tenants with quiet enjoyment of the rental unit, failing which the tenants may apply for monetary compensation for the landlords' failure to comply with the *Act* or this order;

I further order that rent remains \$1,700.00 per month until it has been increased in accordance with the *Act* and the regulations.

I further order that the tenants be permitted to reduce rent for a future month by \$140.00 as recovery of the overpayments made in rent.

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: February 02, 2023

Residential Tenancy Branch