



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, DRI, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on February 12, 2023, to dispute an illegal rent increase and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issues to be Decided

Should the Notice be cancelled?
Did the landlord increase the rent illegally?

Background and Evidence

The tenancy began on April 1, 2013. Market rent in the amount of \$1,100.00 was payable on the first of each month. The tenants are to pay the difference between the market rent and the subsidy. Subsidy is based on the 30% of the tenants’ family income.

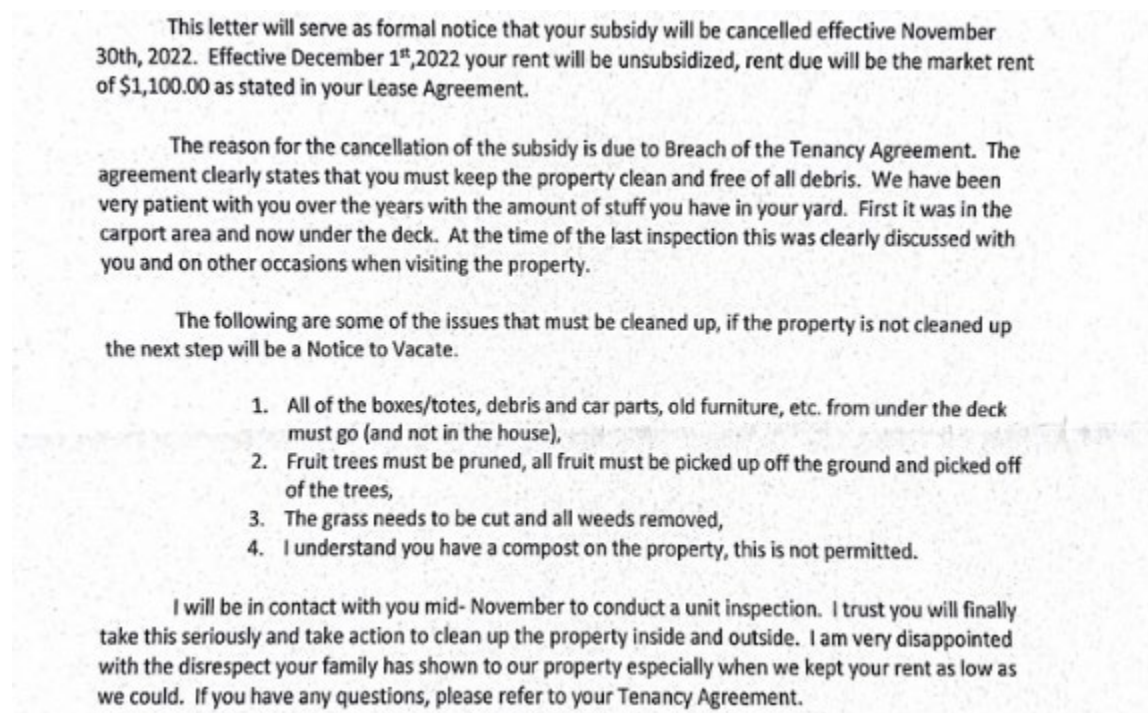
The parties agreed that the tenants were served with the Notice by registered mail which was received on February 15, 2023.

The tenants submit that the landlord has removed their subsidy despite no changes in the household income.

The advocate for the tenants submit that the landlord sent the tenant’s a letter on October 18, 2022, that their subsidy is cancelled and that effective December 1, 2022,

they are to pay the market rent. The advocate submits there is nothing in the letter sent by the landlord that this was because the tenant's income was the reasons for cancelling the subsidy.

Filed in evidence is a copy of the letter which in part reads.



The landlord's agent testified that the tenants have breached their obligations under the tenancy agreement specifically clause 2 on page 8 that reads as follows:

- 2) Tenant's obligations:
- a) The Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access. The Tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the Tenant or a person permitted on the residential property by the Tenant. The Tenant is not responsible for reasonable wear and tear to the residential property.
 - b) If the Tenant does not comply with the above obligations within a reasonable time, the Landlord may discuss the matter with the Tenant and may seek a monetary order through dispute resolution under the *RTA* for the costs of repairs, serve a notice to end a tenancy, or both.

The landlord's agent testified because of a breach, they notified the tenants that they not qualify for rent subsidy.

The landlord's agent testified that further the tenants family income has significant increase over time, and they do not qualify for rent subsidy. The landlord's agent stated that the family income is \$94,945.00 and 30% of that amount would equal a new monthly rent of \$2,290.00. As that amount is greater than the fair market rent the tenants were obligated to a pay \$1,100.00. The landlord's agent stated that the letter of October 18, 2022, could have been better written.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant's rent has been subsidized. I have no authority under the Act determine if the tenants qualifies, that is not an issue for me to determine. However, I do have the authority to consider the terms of the written tenancy agreement.

On October 18, 2022, the landlord informed the tenants that they no longer qualify for a rent subsidy because the tenants had breached clause 2 of the tenancy agreement. I find clause 2 does not permit the landlord to cancel the rent subsidy. Clause 2 allows the landlord to seek compensation or serve a notice to end tenancy, this would be under section 47 of the Act.

While I accept 30% of the tenant's family income of \$94,000.00 would equal the amount of \$2,290.00 and would exceed the market rent of \$1,100.00, making the tenants not eligible for a rent subsidy; however, I find it would have been reasonable for the landlord to notify the tenant's that they do not qualify for subsidy based on income; rather than to indicate it was based on breaching other terms of the tenancy agreement. Therefore, I find it reasonable to cancel the Notice, as the landlord was not entitled to remove the subsidy for a breach of the tenancy agreement.

However, the tenants were informed at the hearing that their rent subsidy is based 30% of their family income, as stated in the tenancy agreement. Clearly based the tenants' family income they no longer qualify subsidy housing. This is not an illegal rent increase and the tenants are obligated to pay that amount once notified.

At the hearing the tenants agreed that they pay market rent as stated in their tenancy agreement of \$1,100.00 commencing April 1, 2023.

Conclusion

The tenants' application to cancel the Notice is granted. The landlord has not illegally increased the rent, the tenants no longer qualify for subsidy. I have not granted the tenants the recover of the filing fee because the tenants have received the benefit on not paying the market rent since December 2022. The tenants must pay rent in the amount of \$1,100.00 commencing April 1, 2023.

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 14, 2023

Residential Tenancy Branch