



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC RP FFT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenants seek:

- an order cancelling a One Month Notice for Cause dated "April 2023" (1 Month Notice) pursuant to section 47;
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:28 am, in order to enable the Landlord to call into this teleconference hearing. The two Tenants (AH and BH) and the Tenants' advocate (CB) attended the hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding (NDRP). I also confirmed from the teleconference system that AH, BH and I were the only ones who had called into this teleconference.

CB stated the Tenants served the NDRP on the Landlord by registered mail on April 11, 2023. CB stated the Tenants served the amendment (Amendment) to the Application on the Landlord by registered mail on April 28, 2023. CB stated the Tenants served their evidence on the Landlord by registered mail on May 9, 2023. CB provided the Canada Post tracking numbers for service of the NDRP, Amendment and Tenants' evidence on the Landlord to corroborate his testimony. Based on the undisputed testimony of CB, I

find the NDRP, Amendment and Tenants' evidence was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

CB stated the Tenants did not receive any evidence from the Landlord for this proceeding.

Preliminary Matter – Effect of Non-Attendance of Landlord

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Even though the Tenant made the Application to seek cancelation of the 1 Month Notice, the Landlord must nevertheless meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Landlord did not attend the hearing before it ended at 11:28 am, being more than 10 minutes after its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 1 Month Notice is valid. As such, I order the 1 Month Notice to be cancelled. The tenancy will continue until it is legally ended in accordance with the Act.

Issues to be Decided

Are the Tenants entitled to:

- an order for the Landlord to complete repairs to the rental unit?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

BH stated there is a written tenancy agreement between the Tenants and the Landlord, but the Tenants cannot find their copy of the agreement. BH stated the tenancy commenced about ten years ago. BH stated the current rent payable to the Landlord is \$810.00 payable on the first day of each month. BH stated the Tenants paid a security deposit of \$325.00 to the Landlord. Based on the undisputed testimony of BH, I find there is a tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

BH stated the building in which the rental unit is located was built around 1959. BH stated the electrical outlets upstairs in the rental unit work, but when use, they cause a smell like burning plastic. BH stated an electrician came about three weeks ago and replaced the electrical outlets downstairs. BH testified the electrician told him the electrical wiring was a fire hazard and should be replaced in all units in the building. CB

submitted into evidence a copy of a letter dated March 14, 2023 (Repair Letter) from her to the Landlord in which seven different repairs were requested. BH stated all the repairs requested have been performed by the Landlord.

Analysis

Section 32(1) of the Act states:

- 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

BH stated the electrical outlets upstairs in the rental unit work, but when use, they cause a smell like burning plastic. BH stated an electrician came about three weeks ago and replaced the electrical outlets downstairs. CB provided a copy of the Repair Letter in which seven different repairs were requested. The Repair Letter stated the three electrical outlets in the living room did not work. However, the Repair Letter did not make any mention of any problems with the electrical outlets upstairs. BH admitted all the repairs requested in the Repair Letter have been performed.

As the Tenants have not made a written request to the Landlord to perform repairs on the electrical outlets upstairs in the rental unit, there is no basis for me to issue an order requiring that the Landlord repair the upstairs electrical outlets. As such, I dismiss the Tenants' request for an order that the Landlord complete repairs to the upstairs electrical outlets in the rental unit. Based on the foregoing, the Tenants' request for an order for the Landlord to complete repairs is dismissed without leave to reapply.

As I have cancelled the 1 Month Notice, I find the Tenants have been partially successful in the Application. I award the Tenants the filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to withhold \$100.00 from their monthly rent on a one-time basis in satisfaction of this amount. The Landlord may not serve the Tenants with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenants make the \$100.00 deduction from his rent.

Conclusion

The 1 Month Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

The Tenants are awarded the filing fee of \$100.00 for the Application. I authorize the Tenants to withhold this amount on a one-time basis from their monthly rent on a one-time basis in satisfaction of this amount.

The Tenants' claim for an order that the Landlord complete repairs to the rental unit is dismissed without leave to reapply.

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: June 7, 2023

Residential Tenancy Branch