



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, OLC, MNDCT, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

;

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenants confirmed receipt of the 1 Month Notice on October 6, 2020, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to a monetary order for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy originally began in 2015, with monthly rent currently set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$840.00, which the landlord still holds.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit.

The tenants testified that the original tenants listed on the tenancy agreement included the son, JB, and his parents JB and AB. JB testified that his father had moved to Europe after separating from his mother AB in 2017, and no longer resides in the home. JB testified that in 2017 he married his wife, who resided outside of Canada. JB testified that his son was born shortly after on January, 2017, and the landlord was aware of this. JB testified that the landlord had even gifted his family a high chair, stroller, and baby clothes, and offered his congratulations. JB testified that he has been waiting for his wife and son to join him in Canada, and that the landlord was aware of this as well. JB and AB testified that on September 27, 2020 the landlord had come by to pick up the rent, and the tenants informed the landlord that JB's wife would be arriving on October 2, 2020. JB testified that his wife has arrived, and they are currently awaiting his son's arrival. JB argued that there are currently the same number of occupants as there was at the beginning of the tenancy.

The landlord testified that he only became aware of the arrival of JB's wife on the morning of October 2, 2020 when he received a phone call requesting urgent repairs.

The landlord testified that he had to leave his work, and perform repairs, and was informed that the person would be arriving that day from another country, which added to the urgency due to quarantine requirements. The landlord testified that no details were provided to him before October 2, 2020, nor did he ever grant permission for the additional occupant. The landlord argued he did not know about JB's wife, and that no prior arrangements were made with him.

The tenants also filed an application for a monetary claim, which is noted as \$1.00 on the electronic application. The tenants clarified that they were requesting \$100.00 in rent reduction for the services and facilities not provided. The tenants testified that despite numerous requests about outstanding repairs and maintenance issues, such as issues with the stove, refrigerator, and mould, the landlord has failed to perform repairs in a timely manner. The tenants testified that instead the landlord would blame them for causing the issues.

The landlord disputed the outstanding repairs in the home, and stated that the tenants would contribute to the issues by leaving the refrigerator door open, and not managing the moisture in the bathroom by using the fan.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed their application on October 14, 2020, 8 days after receiving the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

The reason for ending the tenancy provided on the 1 Month Notice is that "the tenants have allowed an unreasonable number of occupants in a rental unit.". Although it is disputed about whether the tenants had properly informed the landlord of the arrival of JB's wife, I find that the number of occupants in the home has not changed. I accept the testimony of the tenants that the father had moved out sometime during this tenancy, and JB's wife had recently moved in. Although the landlord may not approve of the change in occupants, and of the manner by which the tenants have allowed the additional occupant to reside there, I find that the landlord has not provided sufficient evidence to support how that the number of occupants could be considered unreasonable, especially when the total number of occupants is the same as the number at the beginning of the tenancy.

For the reasons outlined above, I find that the landlord has not satisfied me that an Order of Possession is justified pursuant to the grounds provided on the 1 Month Notice. Accordingly, I allow the tenants' application to cancel the 1 Month Notice dated October 6, 2020 and this tenancy is to continue until ended in accordance with the *Act*.

The tenants also made an application for monetary compensation. Although the tenants specified in the hearing that they were requesting \$100.00 as a rent reduction for the landlord's failure to comply with the *Act*, I find that the tenants' application does not clearly specify the amount that they were requesting. I find that the tenants did not provide any monetary order worksheets, and the tenants left the monetary amount blank on page 8 of 10 of their application, next to the box where they indicated that they wanted monetary compensation from the landlord. As a matter of natural justice and fairness, the respondent must know the case against them. In this case I find that the tenants failed to provide a clear breakdown of the specific amount(s) and corresponding details of what they were requesting from the landlord, nor were any amendments were received in accordance with RTB Rule 4.6. Accordingly, I dismiss the tenants' application for monetary compensation for this tenancy with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

The tenants also testified to outstanding repairs that they felt were ignored by the landlord. The landlord disputed the statements made by the tenants. In light of the evidence and testimony before me, I find that the tenants have failed to provide sufficient evidence to support that the landlord has failed to comply with their obligations as set out in the *Act* in relation to outstanding repairs. However, I do remind the landlord of their obligations as set out in section 32 as set out below.

Section 32 of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

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.

As I find that the tenants' application to have merit, I allow the tenants' application to recover the \$100.00 filing fee from the landlord. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated May 19, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenants' favour in the amount of \$100.00. I allow the tenants to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, 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: January 11, 2021

Residential Tenancy Branch