



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, DRI, AAT, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act;
2. An Order to dispute a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act;
3. An Order for the Landlord to allow access to the unit or site for me and/or my guests pursuant to Section 70 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenants and their advocate attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants and the advocate testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on February 28, 2023. The Tenants Notice of Dispute Resolution Proceeding confirmed their receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on February 28, 2023 pursuant to Section 88(a) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on March 9, 2023 by Canada Post mail (the "NoDRP package"). The male Tenant solemnly affirmed that he served the Landlord with the NoDRP package. I find that the Landlord was sufficiently served with the NoDRP package on March 14, 2023 in accordance with Section 71(2)(b) of the Act.

Preliminary Matter

Unrelated Claims

Prior to the Tenants' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the Two Month Notice and their claim to dispute a rent increase. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the Two Month Notice, the claim to dispute a rent increase, and the claim for recovery of the application filing fee at this proceeding. The Tenants' other claim is dismissed, with leave to re-apply, depending on the outcome of this decision.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to an Order to dispute a rent increase that is above the amount allowed by law?
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this oral periodic tenancy began on January 3, 2021. Monthly rent is \$1,700.00 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Mother or Father of the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice is April 30, 2023.

The male Tenant left the hearing early. The female Tenant submitted that when the tenancy began their monthly rent was \$1,600.00 per month. In March 2022, the Landlord decreased the Tenants' rent to \$1,500.00 concomitant with the reduction of one room of space in the rental unit. On August 1, 2022, the Landlord increased the Tenants' rent to \$1,700.00 without providing notice of the increase in the approve form.

The Tenants continued to pay the increased rent amount until engaging with a community resource centre. The Tenants seek a monetary award of \$1,800.00 which represents the \$200.00 per month more they paid in rent starting in August 2022.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

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 that party, or dismiss the application, with or without leave to re-apply.

The hearing continued for 50 minutes and the Landlord did not call into the hearing. It is the Landlord's burden to prove on a balance of probabilities why the tenancy needs to end. As the Landlord did not attend to provide evidence about why this tenancy needs to end, I cancel the Landlord's Two Month Notice. The tenancy will continue until ended in accordance with the Act.

The Tenant testified that the Landlord unilaterally decreased their rental unit space in March 2022 with a \$100.00 per month deduction in rent, so their rent continued at \$1,500.00 per month. In August 2022, the Landlord told the Tenants that they must pay \$1,700.00 per month in rent, but did not provide a rent increase notice in the approved form. The Tenants continued to pay the increased amount of rent until they began working with a community resource centre.

The Tenants seek recovery of the increased rent money they paid from August 2022 to the present in the amount of \$1,800.00. A Landlord may impose a rent increase but only up to the amount calculated in accordance with the regulations. The allowable percentage increase in 2022 was 1.5%. I find the Landlord did not provide the Tenants notice of a rent increase in the approved form or within the proper time frame in accordance with Section 42 of the Act. The Tenants monthly rent amount is \$1,500.00. I grant the Tenants recovery of the increased rent amount totalling \$1,800.00 pursuant to Section 43(5) of the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants' total monetary award is \$1,900.00. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$950.00 from the next two month's rent due to the Landlord. On May 1, 2023, the Tenants owe the Landlord \$550.00 for their rent, and on June 1, 2023, the Tenants owe the Landlord \$550.00 for their rent. On July 1, 2023 and going forward, the Tenants owe the Landlord monthly rent in the amount of \$1,500.00.

Conclusion

The Landlord's Two Month Notice is canceled. The tenancy will continue until ended in accordance with the Act.

The Tenants' application disputing a rent increase is granted. The Tenants' total monetary award is \$1,900.00 which includes payment of the application filing fee. The Tenants owe rental payments to the Landlord:

- on May 1, 2023, in the amount of \$550.00;
- on June 1, 2023, in the amount of \$550; and,
- on July 1, 2023 and going forward, the rent amount is \$1,500.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 06, 2023

Residential Tenancy Branch