



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

DRI, CNC, OLC, LRE

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the landlord confirmed that they did not expect payment of the deposit at this stage and they were withdrawing the One Month Notice to End Tenancy for Cause issued on July 30, 2009. This Notice is without force or effect.

Issue(s) to be Decided

Has the landlord issued an illegal rent increase?

Should the 1 Month Notice's to End Tenancy for Cause issued on August 10, 2009 be cancelled?

Should the tenants receive compensation from the landlord as the result of a loss of quiet enjoyment?

Should there be limits placed on the landlord's right to enter the rental unit?

Background and Evidence

The parties agreed that the tenant has been served with a One Month Notice to End Tenancy for Cause on August 12, 2009. The reasons stated for the Notice to End Tenancy were that the tenants have significantly interfered with or unreasonably

Residential Tenancy Branch
Ministry of Housing and Social Development

disturbed another occupant or the landlord and that the tenants have put the Landlord's property at significant risk.

During the hearing the parties referred to a rental agreement signed on February 1, 2009 which indicates monthly rent in the sum of \$725.00 and that the landlord and tenant shall share a bedroom within the rental unit, to be used as storage by each party.

The tenant stated that several months into the tenancy the landlord indicated he was going to build a storage shed and cease use of this room. As a result the landlord requested the tenants pay an additional \$125.00 per month rent from the tenants. The tenant submitted written evidence of this request. The tenant stated that he does not believe they should have to pay this amount.

During the hearing the parties agreed that the landlord now wants to erect a wall in the storage area in order to separate his belongings from the tenant's. The landlord stated this would provide him with secure storage and not affect the tenant's use of the room. The tenant submitted that since he has refused to pay an additional amount in rent the landlord has been constantly bothering them and that the planned alteration to the storage area is in response to the tenant's refusal to accept a rent increase.

During the hearing the parties agreed that the use of the storage room could remain as it has since the start of this tenancy. The landlord stated that he would prefer to build a separate space in the room; however, the landlord also indicated he could accept continuation of the original arrangement.

The tenant testified that they are requesting compensation in the sum of \$725.00 per month from July, 2009 to September 2009 inclusive. The tenant stated that they have found the landlord's actions harassing. The landlord evidence indicates that they have given the tenants four letters and that it does not support an allegation of loss of quiet enjoyment. The tenant testified that his spouse suffers from a brain injury and has found the landlord's actions particularly upsetting.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the landlord has cause to evict the tenants. Outside of a dispute over the use of a storage room the landlord has not provided any evidence or testimony that would support termination of this tenancy. The Notice to End Tenancy for Cause issued on August 10, 2009 is cancelled and of no force or effect. This tenancy will continue.

In relation to the tenant's application to dispute an additional rent increase, section 42 of the Act provides:

- 1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

Residential Tenancy Branch
Ministry of Housing and Social Development

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the Act further provides:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.

This tenancy commenced less than twelve months ago and the tenant's have not agreed, in writing, to a rent increase. Therefore, I find that this tenancy shall continue at the current rent owed in the sum of \$725.00 per month until such time as the landlord is able to provide proper notice of a rent increase, as required by the Act.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the tenant's claim for compensation in the sum of \$2,175.00 and dismiss this portion of the Application, without leave to reapply. The tenants have been annoyed by the landlord but have provided no evidence that damage or a loss occurred. The tenant's spouse has been upset by the actions of the landlord but I do not accept that her level of distress is in proportion to the actions of the landlord. The landlord did attempt to reach agreement in relation to a rent increase and the tenants have taken appropriate action in order to remedy this conflict. However, the tenants have not

Residential Tenancy Branch
Ministry of Housing and Social Development

demonstrated any loss that has occurred as the result of the landlord's breach of the Act.

During the hearing the parties indicated some willingness to continue with the original agreement included in their rental agreement. This agreement is unconventional and continued entry of the landlord to the storage area which exists within the tenant's home, could pose difficulties. The landlord has indicated that he will not abuse the arrangement and has had cause to enter on only several occasions since February.

I have determined that construction of walls within the storage area would constitute an alteration of the agreed upon space and find that the landlord may not, without the consent of the tenant, carry out alteration to this shared storage space. If the landlord finds this arrangement inconvenient he is at liberty to construct a storage shed elsewhere and store his belongings there.

If the landlord continues to utilize the storage space I find that entry to the room must be made as determined by section 29 of the Act, which provides:

- 1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
 - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Residential Tenancy Branch
Ministry of Housing and Social Development

During the hearing the landlord confirmed he would not expect to enter this storage area on more than an occasional basis and I warn the landlord that excessive entry could form the basis of a claim by the tenant for loss of quiet enjoyment.

Conclusion

I have determined that the Notice to End Tenancy for Cause issued on August 10, 2009 is of no force or effect and that this tenancy shall continue.

The tenant has not paid a rent increase beyond that included in the February 2009 tenancy agreement. The landlord is at liberty to increase the rent as allowed by the Act.

I have dismissed without leave to reapply the tenant's application for compensation due to the loss of quiet enjoyment.

The landlord will enter the rental unit as determined by section 29 of the Act.

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: September 29, 2009.

Dispute Resolution Officer