



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, DRI, RP

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase, and for an Order requiring the Landlord to make repairs. It is readily apparent from information on the Application for Dispute Resolution that the Tenant is also seeking compensation for money owed in relation to services that were withdrawn or not provided during this tenancy, and the Application for Dispute Resolution was amended accordingly, at the request of the Tenant.

The Tenant stated that on December 24, 2009 she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the agent for the Landlord that served her with the Notice to End Tenancy which is the subject of this dispute. In the absence of evidence to the contrary, I accept that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenant should be entitled to compensation for services that were not provided during this tenancy; whether the rent for this rental unit has been increased in accordance with the *Act*; whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, should be set aside; and whether there is a need for an Order requiring the Landlord to make repairs.

Background and Evidence

The Tenant stated that her fridge stopped working on June 30, 2009; that she reported the problem to the Landlord twice on July 01, 2009; that she reported the problem to the Landlord twice on July 02, 2009; that she reported the problem to the Landlord twice on

July 03, 2009; and that the fridge was replaced on July 04, 2009. She stated that most of the food in her fridge and freezer spoiled as a result of the delay in replacing the fridge, which she values at \$150.00.

The Tenant stated that she moved into this rental unit, in part, because the residential complex had a pool. At the hearing the Tenant stated that the swimming pool was closed in May or June of 2007; at one point in her written documents she stated that the pool was closed "a couple" of months after she moved into the rental unit; and at one point in her written documents she stated that the pool was closed for 27 months. The Tenant stated that the pool was reopened on July 17, 2009. She stated that she used the pool for rehabilitative purposes and that she relied heavily on the pool. She stated that she has been paying \$50.00 per month to use the pool at a recreation center; that the Landlord has never compensated her for the loss of this facility; and that her rent should be reduced by \$50.00 per month to reflect the loss of use of the pool.

The Tenant stated that this tenancy began on August 15, 2006; that she was required to pay monthly rent in the amount of \$580.00 when this tenancy began; that the rent was increased to \$603.00 "plus change" sometime in August of 2007; that the rent was increased to \$625.00 "plus change" sometime in August of 2008; and that the rent was not increased in 2009. She is not certain of the exact amount of her rent after the increases.

The Tenant contends that the rent increase that was imposed in August of 2007 did not comply with the legislation because the increase was based on monthly rent of \$580.00, and should have been based on monthly rent of \$530.00, which she contends is the value of the tenancy as a result of the pool closure.

The Tenant stated that she found a Ten Day Notice to End Tenancy for Unpaid Rent posted on the door of the rental unit. She does not recall precisely when she located the Notice but she believes it was on, or about, December 15, 2009, as that is the date of the Notice. The Notice had an effective date of December 25, 2009. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$2,652.17 within five days after the Tenant is assumed to have received the Notice.

The Tenant stated that she did not pay the rent that the Landlord declared was due because she believed she did not owe any rent because she had been overpaying her rent since the pool was closed. The Tenant filed an Application for Dispute Resolution seeking to dispute the Notice on December 21, 2009.

The Tenant stated that she has not paid rent for September, October, November, and December of 2009 or January of 2010 due to her belief that she has been overpaying her rent.

Analysis

Based on the evidence of the Tenant and in the absence of the evidence to the contrary, I find that the Landlord replaced the Tenant's fridge four days after receiving notification that it had stopped working in the summer of 2009. In the absence of evidence to the contrary, I find that many of the groceries in the fridge were spoiled. The Tenant did not submit evidence to support her claim that the value of the groceries that spoiled was \$150.00, as she did not list the items that were in her fridge nor did she provide evidence of the value of those items. In the absence of evidence that supports the financial claim, I dismiss the Tenant's claim for compensation for the spoiled groceries.

Based on the evidence of the Tenant and in the absence of the evidence to the contrary, I find that the Tenant had access to a swimming pool as one of the terms of this tenancy and that the pool was not operating between at least June of 2007 and July 17, 2009, which is a period of approximately 24.5 months.

Based on the evidence of the Tenant and in the absence of the evidence to the contrary, I find that the Tenant used the pool for rehabilitative purposes; that the pool was an important term of her tenancy; that she paid \$50.00 per month to use a community pool; and that her monthly rent was not reduced in compensation for the pool being closed.

Section 27(2) of the Act stipulates that a landlord may terminate or restrict a service or facility that is not essential to the tenant's use of the rental unit as living accommodation, or is a material term of the tenancy agreement if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Based on the evidence provided by the Tenant, I find that the closure of the pool in this Tenant's circumstances, due to her stated need for rehabilitation, reduces the value of her tenancy by \$50.00, as I find this to be a reasonable amount of compensation for the inconvenience and expense for using an off-site swimming pool. On this basis, I find that the Tenant is entitled to compensation, in the amount of \$1,225.00, which represents 24.5 months of compensation at a rate of \$50.00 per month.

Section 42(1) of the Act stipulates that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement, if the rent has not been previously increased, and, if the tenant's rent has previously been increased, at least 12 months after the effective date of the last rent increase made in accordance with this Act.

Section 42(2) of the Act stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 42(3) of the *Act* stipulates that a notice of a rent increase must be in the approved form.

Based on the evidence provided by the Tenant, I am unable to conclude that any of the rent increases that were imposed by the Landlord did not comply with section 42(1) of the *Act*. In reaching this conclusion, I was influenced by the Tenant's inability to determine precisely when her rent was increased in August of 2007 or August of 2008. Assuming the rent was increased on, or after, August 15, 2007 and/or August 15, 2008, I find that the increases did comply with section 42(1) of the *Act*.

Based on the evidence provided by the Tenant, I am unable to conclude that any of the rent increases that were imposed by the Landlord did not comply with section 42(2) and 42(3) of the *Act*. In reaching this conclusion, I was influenced by the Tenant's inability to recall how she was notified of the rent increases. Without clear evidence that she was not provided written notice that complies with these sections, I am unable find that the increases did comply with sections 42(2) and 42(3) of the *Act*.

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the Residential Tenancy Regulations; ordered by the director on an application under section 43(3); or agreed to by the tenant in writing. There is no evidence that the director authorized a rent increase pursuant to an application under section 43(3) or that the Tenant agreed to an increase in writing.

I find that the rent increase that was imposed in August of 2007 did comply with the increase authorized by the Residential Tenancy Regulation in 2007. In reaching this conclusion, I find that the rent was increased from \$580.00 to \$603.00 "plus change" in August of 2007, although the Tenant cannot state the exact amount of the increase. The allowable increase in 2007 was 4%, which represents a rental increase of \$23.20 and a new monthly rent of \$603.20. Based on the information provided by the Tenant, I am unable to conclude that her rent was increased in excess of 4% in 2007.

I find that the rent increase that was imposed in August of 2008 did comply with the increase authorized by the Residential Tenancy Regulation in 2008. In reaching this conclusion, I find that the rent was increased to \$625.00 "plus change" in August of 2008, although the Tenant cannot state the exact amount of the increase. The allowable increase in 2008 was 3.7%, which represents a rental increase of \$22.31, assuming the rent was increased to \$603.20 in August of 2007, which increases the Tenant's monthly rent to \$625.51. Based on the information provided by the Tenant, I am unable to conclude that her rent was increased in excess of 3.7 in 2008.

As I have found no evidence to conclude that the Tenant's rent increases do not comply with the *Act*, I hereby dismiss the Tenant's application to dispute a rent increase, pursuant to section 43(2) of the *Act*.

In determining the matter regarding the imposed rent increases, I reject the Tenant's argument that the rent increases should have been based on the reduced monthly rent of \$530.00. I find that the rent prior to the increase in 2007 was \$580.00 as the Tenant had not made an application to have her rent reduced at that time. Even if the Tenant had applied for compensation for the withdrawal of this service prior to this rent increase, I find that any rent reduction awarded to her would have been for the period in which she was denied access to the pool and would not constitute a permanent rent reduction. On this basis, the Landlord would have been entitled to base the rent increases on the original amount of rent.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord whether or not the landlord has complied with the *Act*, unless the tenant has a right to deduct all or portion of the rent. In these circumstances, I find that the Tenant did not have the right to deduct any portion of the *Act* simply because she believed that her rent should have been reduced when the pool was closed or because she believed that the rent increases were unlawful.

Based on the evidence provided by the Tenant, I find that the Tenant did not pay rent for September, October, November, and December of 2009 or January of 2010, as is required by section 26(1) of the *Act*.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on December 25, 2009, pursuant to section 46 of the *Act*. As the evidence shows that the Landlord had the right to serve the Tenant with a Notice to End Tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Notice to End Tenancy for Unpaid Rent, dated December 15, 2009. This Notice remains in full force and effect; the tenancy ended in December of 2009 pursuant to this Notice; and the Tenant is currently overholding the rental unit.

Conclusion

I find that the Tenant has established a monetary Order in the amount of \$1,225.00, as compensation for being unable to use the swimming pool in the residential complex for a period of 24.5 months.

Pursuant to section 65(1)(f) of the *Act*, I hereby authorize the Tenant to withhold \$625.00 from the rent payment that was due for September of 2009 and \$600.00 from the rent payment that was due for October of 2009, in full satisfaction of this monetary claim.

I decline to grant the Tenant's request for an Order requiring the Landlord to make repairs to the rental unit, as this tenancy ended on December of 2009 and the Tenant is currently overholding the rental unit.

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 29, 2010.

Dispute Resolution Officer