

DECISION

Dispute Codes: OLC, ERP, RP, LRE and FF

Introduction

This application was brought by the tenants seeking an Order that the landlord comply with the *Residential Tenancy Act* and *Regulations* and the rental agreement. In addition, the tenants sought orders for emergency repairs, repairs to the rental unit and an order imposing conditions on the landlord's right to enter the rental unit.

Issues to be Decided

This application requires a decision on whether the tenancy falls within the *Act*, and whether orders for repairs and restricting the landlord's entry to the rental unit are warranted.

Background and Evidence

This tenancy is in a 70-unit residential hotel which falls within the City of Vancouver's Single Room Occupancy (SRO) guidelines.

The tenancy began on May 17, 2009. Rent is \$250 per week and there is no security deposit.

During the hearing, the tenant gave evidence that the incident which gave rise to this application occurred in November 2009 when the landlord's agent refused to accept a rent payment and said the tenants would have to move out on November 29, 2009.

The landlord stated that there is a provision in the rental agreement that authorizes the landlord to do so.

The tenant also stated that a number of his requests for repairs had gone unheeded or took in inordinately long period of time to complete. Specifically, he noted a dysfunctional shower tap, a broken valve on the hot water radiator that made it impossible to adjust the heat, delay in having his bed replaced following pest treatment, a window painted shut and a bathroom door latch painted over so it would not close.

The landlord stated that the first she had heard of the need for repairs was when she received the tenant's late evidence prior to the hearing. The tenant conceded that he had not made the requests in writing but had addressed them verbally to staff members.

The tenant also expressed concerns over the housekeeping services entering the room without knocking and water shut off and fire alarms without proper notice.

The landlord stated that she gave 24-notice of service interruptions when possible, but on the occasions referred, she did not have advance notice from municipal officials who were conducting tests.

She stated that as an SRO, the building is subject to four inspections annually by municipal authorities, and that a number of renovations and improvements had been made and the applicant tenants reside in one of the renewed rooms.

The landlord gave evidence that that direction to the housekeeping staff is that they always knock before entering, and she noted that the service is offered free to tenants and it is optional. The tenant's evidence included copies of notices of housekeeping calls and the option to decline.

The tenant stated that he had requested a monthly tenancy when he moved in but was refused. The landlord presented him with a written monthly agreement to commence January 1, 2010, but included the requirement for a security deposit of \$500.

The tenant did not sign the agreement and states he is looking for other accommodation.

Analysis

I find that this tenancy falls within the *Residential Tenancy Act* and hereby order that the landlord comply with the Act and Regulations. In keeping with that finding, I must advise the landlord that the provision in the rental agreement that allows the landlord to end the tenancy without notice under the *Act* is unenforceable under section 5 which states that:

- . 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In addition, I find that the tenants are not obligated to sign the new rental agreement as offered by the landlord.

Section 20(a) of the *Act* prohibits a landlord from requiring a security deposit “at any time other than when the landlord and tenant enter into the tenancy agreement.” Furthermore, section 14(2) of the *Act* provides that, “A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.”

As to the tenants claims with respect to needed and delayed repairs, I accept the evidence of the landlord that she was not made aware of the tenant’s request for repairs. I accept the landlord’s assurance that she will have the noted deficiencies looked into and remedied where possible.

The parties are aware that the landlord’s obligations with respect to repairs and maintainance under section 32 of the *Act* are tempered by consideration of the age and character of the building. This might be applicable, for example, to the tenant’s wish for temperature control in the rental unit, although the landlord has promised to have a qualified service person examine the control valve.

The tenants were reminded that, if repairs are needed in future, they can better ensure a positive response by advising the landlord in writing.

I find that an order limiting the landlord’s access to the rental unit is not warranted. The request resulted from instances in which the housekeeper is said to have entered the rental unit without knocking. I believe this issue has been resolved by the landlord’s promise to remind the housekeeper of the need to knock, and the establishment of a regular window of time during which housekeeping is done.

I find that the filing fee should be split equally between the tenants and the landlord and hereby authorize and order that the tenants may reduce the next rent due payment by \$25 to recover half of the deposit.

Conclusion

This is a tenancy under the *Residential Tenancy Act* and I hereby order the landlord to comply with the *Act* including removal of that portion of the rental agreement that contravenes the Notice to End Tenancy requirements of the *Act*.

The tenant may recover half of the filing fee by withholding \$25 from the next due rent payment.

January 8, 2010.