



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing was scheduled to deal with the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and Orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

At the commencement of the hearing I determined that a large written submission made by the tenant in the days preceding this hearing was not served upon the landlord. Accordingly, I did not accept the evidence and have not considered it in making this decision.

On a procedural note, I did not hear evidence pertaining to the tenant's request for a Monetary Order as the tenant did not indicate an amount of compensation sought by the tenant in making the application. Therefore, the only issues addressed during this hearing pertained to the tenant's requests for Orders for compliance.

Issues(s) to be Decided

Has the tenant established that it is necessary to issue Orders to the landlord for compliance with the Act, regulations or tenancy agreement?

Background and Evidence

I was provided the following undisputed evidence. The tenancy in unit 402 commenced February 1, 2007. When the tenancy commenced the tenant was required to pay rent of \$500.00 on the 1st day of every month. The written tenancy agreement indicates that a fridge and stove are to be provided to the tenant; however, the written tenancy agreement was silent with respect to the provision of cable. The rent was increased to \$540.00 per month effective September 1, 2008 and the Notice of Rent Increase indicated the rent increase included the provision of cable. The rent was increased one year later to \$560.00 per month. In making this application the tenant made three requests:

1. That the rent increases paid by the tenant be returned to the tenant and that rent not be increased for the next four years.
2. That the tenant be provided one of the renovated units on the residential property for a set rent of \$550.00 per month for four years.
3. That the landlord collects the rent from the tenant or provides a lock box at the residential property.

Rent increases and cable

The tenant submitted that when his tenancy commenced the landlord advertised that cable was included in rent and that other tenants were receiving free rent. The tenant was able to use the cable free of charge until the rent increase took effect September 1, 2008.

The landlord submitted that the tenant has disputed the rent increases issued in 2008 and 2009 by way of an Application for Dispute Resolution made under file number 739553 which was dismissed without leave on December 3, 2009 for the tenant's failure to appear at that hearing. The landlord was of the position that upon dismissal of that application the rent has been established at \$560.00 per month.

The landlord acknowledged that units at the residential property were advertised to include cable but that in 2008 the cable provider changed and cable rates increased. The landlord passed on the increases to the tenant. The landlord stated the tenant is free to obtain his own cable service or discontinue cable usage. The landlord acknowledged that units are currently advertised to include cable but that units are currently renting for \$700.00 to \$750.00 per month.

Relocation to new unit

The tenant submitted that he should be permitted to move to one of the landlord's renovated units available on the residential property. The landlord submitted that the tenant would be required to pay market rent for one of the renovated units which are being rent for \$700.00 - \$750.00 per month.

The tenant was not interested in paying market rent for a new unit. Rather, the tenant was of the position he was entitled to a new unit because his unit requires cleaning and repairs. The tenant acknowledged that he has not made any written requests for repairs for any of the outstanding issues.

The landlord acknowledged that the unit may require cleaning currently but pointed out that the tenant has been living in the unit for a number of years.

Rent collection

The tenant submitted that he must travel approximately five miles to deliver his rent cheques to the landlord. The tenant stated that he pays rent by cheque.

The landlord submitted that there is a staff person who attends the residential property regularly who is authorized to accept rent payments and issue receipts. The tenant acknowledged that is familiar with the landlord's staff person and has paid his rent to that person in the past but claims that he does not always see that person. The tenant

appeared agreeable to providing the landlord with post-dated cheques or mailing cheques to the landlord.

Analysis

Upon consideration of the submissions before me I make the following findings with respect to the tenant's requests for Orders for compliance.

Rent Increases and cable

The landlord submitted that the tenant has previously requested dispute resolution for the rent increases imposed upon him and that the tenant may not raise this issue again. I have considered this position and find as follows.

Sections 41 through 43 of Part 3 of the Act provide for rent increases. The Act refers to the Residential Tenancy Regulations (the Regulations) to determine the amount of a permissible rent increase. Sections 22 and 23 of the Regulations provide for the amount of rent increases. Section 22 of the Regulations provides for the annual rent increase that factors in the annual inflation rate + 2% and this increase is not disputable by a tenant. Section 23 provides for "Additional Rent Increases" that provides the landlord the ability to request a greater increase to factor in significant repairs, financial losses and units renting for considerably less than market value. To obtain an Additional Rent Increase the landlord must make an Application for Dispute Resolution.

I find that other than section 23 of the Regulations there is no other provision for an Additional Rent Increase. Therefore, I find that the reference to an Additional Rent Increase on a Tenant's Application for Dispute Resolution relates to situations where a landlord has applied for an Additional Rent Increase as permitted by section 23 of the Regulations.

Although the tenant's previous application related to a dispute of an Additional Rent Increase the landlord had not made an application for an Additional Rent Increase. Nor was the tenant's previous application amended to indicate the tenant was disputing non-compliant Notices of Rent Increase. Therefore, I find that the dismissal of the tenant's previous application does not preclude the tenant from raising the issue of non-compliant Notices of Rent Increase by way of this application.

According to section 43 of the Act the landlord is limited to the amount of rent increase. In the absence of written agreement by the tenant or an Order from the Director authorizing an Additional Rent Increase, the annual rent increase is limited to the amount prescribed by the Regulations. In 2008 the prescribed rent increase was 3.7%.

Starting September 1, 2008 the landlord began collecting a rent increase of \$40.00 per month which is an increase greater than 3.7%. Although the landlord submitted that this increase included the provision of cable the landlord did not obtain the tenant's written consent or the authority of the Director to increase the rent by more than 3.7%. Therefore, I find the rent increase to \$540.00 per month to be non-compliant with the requirements of the Act.

In addition, the rent increase imposed in 2009 does not comply with the Act as the rent increase collected by the landlord was more than 3.7%.

Section 43(5) of the Act provides that "if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase."

Having found the rent increases imposed in 2008 and 2009 did not comply with the Act, all of the rent increases paid by the tenant are recoverable by the tenant. Accordingly, I **ORDER that the monthly rent be set at \$500.00 per month in accordance with the tenancy agreement until such time the rent is legally increased. I further**

authorize the tenant to withhold the overpayment of rent from subsequent rent payments in accordance with section 45(3) of the Act. I calculate the overpayment to be \$1,260.00 [$\$40 \times 12 \text{ months} = \$480.00 + \$60.00 \times 13 \text{ months} = 780.00$]. The landlord retains the right to make an application for an Additional Rent Increase.

Having heard that free cable was advertised at the commencement of the tenancy and was provided to the tenant free of charge for more than a year I find that cable was a service or facility to be included in the rent. Therefore, **I ORDER the landlord to refrain from terminating cable to the rental unit.**

Relocation to a new unit

The tenant submitted his unit is in need of cleaning and repair. The need for cleaning and repair does not form a basis to order the landlord to provide a different unit to the tenant.

I find that the state of cleanliness of the rental unit at the beginning of the tenancy does not warrant an Order for the landlord to clean the unit at the present time. Rather, if the unit was unclean at the beginning of the tenancy the time to request cleaning was long ago.

The tenant was informed of his right and encouraged to make requests for repair to the landlord in writing. Upon receipt of a written request for repairs it is expected that the landlord investigate the request and take sufficient action so that the condition of the rental unit complies with the requirements of the Act.

In light of the above, I make no Orders to the landlord for repairs or cleaning with this decision. If the tenant makes written requests for repairs and sufficient action is not taken within a reasonable time, the tenant may make another Application for Dispute Resolution.

Section 32 of the Act provides for a landlord's and tenant's obligations to repair and maintain the rental unit. I have reproduced section 32 here for the benefit of both parties:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Rent Collection

The Act provides that a tenant must pay rent when due in accordance with the tenancy agreement. The Act does not require the landlord to provide a collection box for the tenant's use or require that a landlord attend the rental unit to collect rent. Rather, the parties are encouraged to discuss and agree on a suitable arrangement for payment of rent. Having heard from both parties, I am satisfied that the options available to the

tenant for payment of rent include mail, providing the landlord with post-dated cheques, personal delivery to the landlord's office, and giving rent cheques to the landlord's staff person.

I find there are sufficient options available to the tenant for payment of rent and I make no Orders upon the landlord with respect to collecting rent.

Conclusion

The tenant was partially successful in this application. The monthly rent has been set at \$500.00 per month until such time the rent is legally increased in a manner that complies with the Act. The tenant is authorized to deduct \$1,260.00 from subsequent rent payments in order to recover illegal rent increases collected by the landlord. The landlord is ORDERED not to terminate cable service to the tenant.

The tenant's request for relocation to another unit was dismissed. The tenant's requests for the landlord to pick up rent or provide a rent collection box are dismissed.

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, 2010.

Dispute Resolution Officer