Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

DRI, MNDC, OLC, RP, PSF, and RR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to dispute an additional rent increase; for a monetary Order for money owed or compensation for damage or loss; or an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act) Regulation*, or tenancy agreement; for an Order requiring the Landlord to make repairs to the rental unit; ; for an Order requiring the Landlord to provide facilities or services required by law and for authority to reduce the rent for repairs, facilities or services agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for being unable to use their balcony and for being without heat for five months per year; whether there is a need for an Order require to Landlord to provide heat and to repair the balcony; whether the Tenant is entitled to reduce their rent due to issues with the heat and the balcony; and whether the rent increase proposed by the Landlord for September 01, 2010 complies with the residential tenancy legislation.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 21, 2009. The parties agree that the Landlord served the Tenant with a Notice of Rent Increase that informed her that the rent would increase from $850.00 to $884.00, effective September 01, 2010. This is a 4% increase.

The female Agent for the Landlord stated that the Tenant was subsequently given a letter advising her that the rent was actually increasing to $877.20. The Tenant does not recall receiving that letter. A copy of the letter was not submitted in evidence.

The Tenant contends that she has been unable to use her balcony since the beginning of this tenancy. She stated that when she moved in she was advised that her balcony would be replaced within a month and that work finally commenced on her balcony on October 05, 2010. She stated that the railings and decking are all in need of replacement and that she has not used the balcony, other than to store her hammock and barbecue cover, at any point during this tenancy. She stated that a notice from the City of Victoria was posted on her door that advised her she should not use the deck. The Tenant did not submit a copy of the notice from the City of Victoria that declares her deck is unsafe.

The male Agent for the Landlord stated that the City Of Victoria posted notices on five decks in this residential complex which declared the decks on those units unsafe; that he does not believe that a notice was posted on this Tenant's deck; that he is not aware that the City of Victoria declared the Tenant's deck unsafe; that the Landlord has never told the Tenant not to use her deck; that after repairing the five decks that had been declared unsafe the Landlord elected to repair all decks in the residential complex; and that tenants with decks that had not been declared unsafe were advised many months ago that their decks would be replaced. The male Agent for the Landlord stated that the Tenant's deck will be replaced by October 10, 2010 unless there are unexpected delays.

The Tenant is seeking compensation, in the amount of $1,275.00 for being unable to access her deck for fifteen months. The Tenant is also seeking an Order requiring the Landlord to repair her deck.

The Tenant contends that heat is included in her monthly rent payment and that the heat in the residential complex is shut off during the months of May, June, July, August, and September. She stated that it is often chilly during those months and that she has to heat her rental unit with her oven. The Tenant is seeking compensation, in the amount of $200.00 for being without heat for ten months during her tenancy and she is seeking an Order requiring the Landlord to provide consistent heat throughout the year.

The male Agent for the Landlord stated that the heat and hot water in this residential complex are provided by a boiler; that the heat cannot be turned off without turning off the hot water supply; and that the heat is never turned off.

Analysis

Section 43(1)(a) of the *Ac*t stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the *Residential Tenancy Regulation* stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2009, is 3.2%. As the proposed rent increase that is being imposed by the Landlord is 4%, which is greater than the amount that is calculated in accordance with the regulations, I find that the Landlord does not have authority to increase the rent to $884.00, pursuant to section 43(1)(a).

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord has made an application under section 43(3) of the Act, I find that the Landlord does not have authority to increase the rent to $884.00, pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to the proposed rent increase, in writing, I find that the Landlord does not have authority to increase the rent to $884.00, pursuant to section 43(1)(c).

On this basis, I find that the rent increase of $34.00 that the Landlord attempted to impose on September 01, 2010 is not valid as it does not comply with the legislation. I therefore find that the rent for this rental unit will remain at $850.00 per month until it is increased in accordance with the legislation.

Section 42(3) of the *Act* stipulates that a notice of rent increase must be in the approved from. This generally means that notice of the rent increase must be served on the Notice of Rent Increase form that is generated by the Residential Tenancy Branch or on a reasonable facsimile of that form. As the letter in which the Tenant was advised that the rent was only increasing to $877.20 was not submitted in evidence, I am unable to determine whether the letter serves as proper notice of a rent increase.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that she has been unable to use her balcony for fifteen months. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's statement that the Landlord told her not to use the balcony; by the absence of evidence that refutes the Landlord's evidence that the Tenant was never told that she should not use her balcony; by the fact that the notice from the City of Victoria that was allegedly posted on the Tenant's door was not submitted in evidence; and by the absence of photographic evidence or other documentary evidence that would enable me to make an independent assessment of the condition of the balcony. As the Tenant has failed to establish that she has been denied the use of her balcony for any significant period of time, I dismiss her claim for financial compensation.

I find that the Tenant has submitted insufficient evidence to show that the heat is turned off in her rental unit at any time during the year. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's statement that the heat is turned off for five months per year and by the absence of evidence that refutes the Landlord's evidence that the heat cannot be turned off without impacting the

hot water for the building. As the Tenant has failed to establish that the heat is turned off for any significant period of time, I dismiss her claim for financial compensation.

Conclusion

As the parties agree that Landlord began replacing the Tenant's balcony on October 05, 2010, I hereby Order the Landlord to complete those repairs in a timely manner. Upon completion of the repairs to the balcony, I hereby Order the Landlord to provide the Tenant with a letter advising her that the repairs are complete and that she is able to use the balcony. In the event that the Tenant does not receive this letter by October 31, 2010, I hereby Order that the Tenant may reduce her rent for November by $50.00 and that she may continue to reduce her monthly rent by $50.00 unless she receives this letter by the day before the rent is due.

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: October 07, 2010.

Dispute Resolution Officer