



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant to dispute an additional rent increase, compensation for damage or loss, for the landlord to comply with the act, other and recovery of the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started in June 1, 2009 with rent of \$650.00, January 1, 2010 when the tenant's sister moved in the rent was increased to \$750.00 and on December 1, 2010 the rent was increase to \$775.00 for additional utility costs.

The tenant testified that his initial rent was \$650.00 which included the utilities. On January 1, 2020 when his sister moved in the landlord raised the rent to \$750.00; the tenancy agreement does not state or restrict the number of occupants. On December 1, 2010 the landlord raised the rent to \$775.00 to allow for an additional \$25.00 for utilities. There have been no notices of rent increase given to the tenant by the landlord for either the January or December 2010 increases.

The tenant did state that he verbally agreed to and accepted the January rent increase as his sister was moving into the suite and that he had no issue with and had verbally agreed to and accepted the December rent increase to cover the cost of higher utilities.

The tenant is seeking monetary compensation for damage or loss in relation to the landlady's harassment of his sister and this concern relates to a tenant's right to peace and quiet enjoyment. The tenant stated the landlady constantly harasses his sister over how the re-cycling is disposed of and that the police were called on November 1, 2010

when the landlady made physical contact with the tenant's sister. The tenant's sister did not provide testimony or sworn evidence in this hearing in regards to this matter.

The tenant stated that the landlord's husband has entered the suite without giving 24 hours prior notice and that when the landlord's husband did enter the suite illegally the tenant was in the shower. The tenant also stated that he pays his rent in cash and the landlord has never provided the tenant with receipts for the cash rent payments.

The tenant has submitted a 'notice to vacate property' document into evidence. This notice was given to the tenant on November 1, 2010 by the landlord with direction for the tenant to vacate November 30, 2010.

Analysis

Section 42 of the Act addresses rent increases:

Timing and notice of rent increases

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

- (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.

43 Amount of rent increase

(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.

(5) 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.

While landlord did not increase the tenant's rent in accordance with the Act, I find that the tenant verbally accepted both rent increases and the tenant's rent remains \$775.00 per month. However the landlord is to follow the provisions of the Act for any future rent increases and provide the tenant with proper 3 months notice on the approved form.

Section 29 of the Act addresses the tenant's right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Without the direct testimony of the tenant's sister I find that there is insufficient evidence for the tenant's monetary claim. However should the tenants feel that their peace and quiet enjoyment is negatively impacted in the future, the tenants may come back to this office to file for dispute resolution. The tenant's sister may also want to seek remedy for this matter through civil proceedings.

Section 29 of the Act addresses the landlord's right to enter:

Landlord's right to enter rental unit restricted

(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:

The landlord has not complied with the Act in regards to entering the tenants unit and I order that the landlord provide the tenant with 24 hour written notice to enter in accordance with the Act.

Section 29 of the Act addresses payment and non-payment of rent:

Rules about payment and non-payment of rent

(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

The landlord has not complied with the Act in regards to providing receipts to the tenant for cash payments and I order the landlord provides the tenant with a receipt for all rent paid in cash.



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The 'notice to vacate property' document that the landlord served on the tenant is not on a form approved by the Act and this 'notice to vacate property' is set aside and the tenancy continues uninterrupted.

The tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

I therefore allow the tenant's application with the result that the tenancy continues uninterrupted.

The tenant may deduct \$100.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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: December 2, 2010

Dispute Resolution Officer