



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes DRI, CNL, MNDC, OLC, RP, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to cancel a rent increase - Section 43;
2. An Order to Cancel a Notice to End Tenancy - Section 49;
3. A Monetary Order for compensation for utilities paid – Section 67;
4. An Order compelling the Landlord to comply with the Act, regulation or tenancy agreement –Section 62;
5. An Order compelling the Landlord to make repairs to the unit - Section 32;
6. An Order to recover the filing fee for this application - Section 72.

Both parties attended the Hearing and there are no issues in relation to service of documents. The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant withdrew its request to pursue the Order to Cancel the Notice to End Tenancy as they have accepted the end of the Tenancy as of the effective date of the Notice.

Issue(s) to be Decided

- Whether the first lease agreement was intended to be a leniency period?
- Is the Tenant eligible for monetary amounts claimed?
- Should the Landlord be compelled to make repairs or comply with the Act, regulation or tenancy agreement?
- Is the Tenant eligible for recovery of the filing fee?

Background and Evidence

Rent Increase

Evidentiary materials on file indicate that the tenancy began on August 15, 2009 as a fixed term agreement to March 1, 2010 with monthly rent payable in the amount of \$2,000.00. The agreement was signed on July 30, 2009 with the understanding that a one year agreement would be entered into at the end of the fixed term. This understanding was agreed to by both parties and noted as “renew year contract” under the heading “Length of Tenancy”. Both parties also initialled paragraph 3 under the heading “Ending the Tenancy” and changed the term of monthly to “yearly” in relation to the renewal of the tenancy. The Tenant states at the time of viewing the unit and entering into a lease agreement that renovations were being done but that the Landlord told them that the renovations were expected to be completed by August 15, 2009, the

date the tenancy was to begin. The Tenant states that he insisted on an addendum to the lease agreement to ensure the renovations would be done as verbally agreed. These renovations are noted in an addendum to the lease agreement. The Tenant further states that the length of the first lease agreement and timing of the second lease agreement was intended to accommodate the travel plans of the Landlord.

On August 11, 2009, four days before the Tenant was to move into the unit, the Landlord's son presented the Tenant with a fax sheet setting out that upon renewal of the lease for a one year period, the rent would increase to \$2,300.00. The Tenant states that this rental increase was not expected or discussed at the time the tenancy was agreed to at the end of July 2009. The Tenant states that this paper was signed by him under pressure given the timing of the upcoming move and he felt coerced by the Landlord into signing the paper. On October 31, 2009, the Tenant signed a one-year lease for the term March 1, 2010 to March 1, 2011. This lease set out the monthly rent payable in the amount of \$2,300.00. The Tenant states that this lease was signed because he felt he had no choice and did not know his rights surrounding rent increases. The Tenant states that he became aware of his rights in March 2011 after the Landlord served him with the Notice to End Tenancy for Landlords use of the home and that he then immediately filed the application to dispute the rent increase.

The Landlord indicates in the evidentiary materials that the 6.5 month lease agreement was a 6.5 month leniency period for less rent than the actual rent of \$2,300.00. The Landlord states that this leniency period was provided to the Tenants with a reduced rent because of the renovations being done to the unit at the time. The Landlord states that the Tenant was informed at the signing of the first lease that the rent would return to \$2,300.00 after the end of the first lease, that he never coerced the Tenant at any time, and that the Tenant never raised any objections to the rent increase until after the Notice to End Tenancy was served. The Tenant claims the amount of \$4,200.00 for the extra rent paid over the term of 11 months.

Utilities

The Tenants state that upon agreeing to lease the unit, the Landlord informed them that the hydro utilities would have to be hooked up in the Tenant's name but that the lower unit tenant would pay a 33.33% share of the hydro bill. The Tenant provided a letter from that tenant confirming this understanding. The Tenant states that after this tenant moved out and a new tenant moved in, the new tenant informed him that they would only be responsible for a 25% share of the hydro as agreed with the Landlord. The Tenant states that this new tenant only paid \$25% share of the hydro bill for September, October and November 2010 and that for January 2011 refused to pay a 25% share and only paid \$90.00. The Tenant states that the new tenant has not since paid for any of the utilities and claims compensation from the Landlord in the total amount of \$770.79 for utilities paid over the amount of 66%.

The Landlord states that the matter of utilities is not their responsibility as this item was not included in the lease agreement and it was up to the Tenant to come to an agreement with the tenant below. The Landlord states that the proportional amounts of

66% , 33% and 25% were merely suggestions to their tenants as to what would be a reasonable apportionment as between the 2 separate tenancies.

Repairs

The Tenant states that the Landlord failed to reimburse them for the cost of repairs to the dishwasher. At the Hearing, the Landlord stated that a cheque had been sent to the Tenant on April 13, 2011 for full reimbursement of the cost requested by the Tenant.

Analysis

The Tenant and Landlord each provided evidence surrounding the reason for a first short-term lease agreement. The Landlord argued that the first lease agreement was intended to be a leniency period with rent reduced from the usual rent due to the inconvenience of the renovations. The Tenant states that the intention behind the first lease was to accommodate the travel schedule of the Landlord and that no mention had been made about a leniency period to accommodate renovations. Taking into consideration the signed addendum that sets out renovations that would be complete by the commencement of the tenancy, it does not seem reasonable that a leniency period would be provided due to renovations when those renovations were expected to be completed by the commencement of the tenancy. Further, there is no indication on the first lease that this was a leniency period. Accordingly, I find that the Tenant's evidence is preferable and that the first lease was not a leniency period on the rental amount.

Rent Increase

Section 42 of the Act provides 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. Section 5 of the Act further provides that a landlord may not contract out of the Act or regulations. A Tenant may agree in writing to an increase in rent that is greater than what is allowed by the Act but the landlord must still follow requirements regarding the timing and notice of rent increases. In order to effectively increase a tenant's rent, even with the written agreement of the tenant, paragraph 6 of the Schedule to the Residential Tenancy Regulation requires a landlord to use an approved Notice of Rent increase available at the Residential Tenancy Branch. This requirement ensures that persons are made aware of their legal rights and obligations as the form contains legal information about the Acts requirements and ensures the protection of both the tenant and landlord.

The tenancy started on August 15, 2009 and although the first lease agreement was only for 6.5 months, there was no intention by either party that the Tenant would be required to move out at the end of the first lease. The intention of both parties was to renew the lease for another year. Although the Tenant signed a fax document on August 11, 2009 that indicated an expected rent increase in March 2010, I find that this document was neither in the required form or provided the required amount of notice. I therefore find this document to be of no effect.

Although the Tenants signed an agreement for the period starting March 1, 2010 with a higher rent than the previous agreement, the Landlord is still bound by the one year timing requirement for a rent increase. The use of a second lease agreement to establish a higher rent in a shorter period of time than what is allowed under the Act cannot be used to subvert or contract out of the Act's one-year requirement. Accordingly, I find that while the Tenants did sign the second lease agreement containing a rent increase in excess of what the Act allows, the Tenants could not agree or contract out of the 12- month requirement before the rent increase could take effect. Accordingly, I find the Tenant's agreement to a rent increase to be of no effect and therefore the Landlord could not legally collect any excess rent.

Given the above facts, I find that the Tenant is entitled to a monetary amount for the excess rent paid between March 1, 2010 and April 30, 2011 in the amount of \$4,200.00 (\$300 x 14 months).

Utilities

In the absence of a written agreement between the Landlord and the Tenant regarding the apportionment of utilities between separate tenancies at the unit, I find that the matter of proportionate responsibility is ambiguous and that it would be reasonable for the Tenant to bear a 66% responsibility for their share of the hydro. Accordingly, I find the Tenant eligible for compensation for that amount paid for hydro in excess of 66% for the period when the second tenant did not pay any or all of their share of the utilities. Noting that the billing period for hydro is bi-monthly, and the final bill for to the end of the tenancy has yet to arrive, the amounts are set out as follows according to the bills and payments received to date and include estimates for the period ending May 2011:

- November 2010 - \$27.98 (shortfall)
- January 2011 - \$147.59 (no payment received)
- March 2011 - \$225.22 (no payment received)
- May 2011 – \$370.00 (tenant's estimation of cost)

The Tenant is entitled to a monetary amount of \$770.79 in compensation for utilities.

Repairs

As the Landlord has stated that the amount claimed by the Tenant in relation to the repair of the dishwasher is being reimbursed to the Tenant by way of a cheque mailed on the day of the hearing, I dismiss this part of the Tenant's application with leave to reapply, should such reimbursement not occur.

Total Entitlement

As the Tenant has established a monetary claim for rent and utility overpayments, the Tenant is also entitled to recovery of the \$50 filing fee. The total entitlement for the monetary order is **calculated as follows:**

Rental Overpayment	\$4,200.00
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Utilities Overpayment	770.79
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$5,020.79

As this decision results in a monthly rent payable of \$2,000 for the remainder of the tenancy and as the Tenant will be moving out of the unit at the end of May 2011 pursuant a Notice to End Tenancy for Landlord's use, rent may or may not be payable for that month depending on the arrangement made between the Landlord and Tenant. Section 51 of the Act provides that where a tenant receives a notice to end a tenancy due to the Landlord's use of the property, the tenant is entitled to receive from the landlord one month's rent and this amount may be withheld from the last month's rent. Given this entitlement, this monetary award is made without any set-off from rent payable to the end of the tenancy.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$5,020.79**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 18, 2011.

Residential Tenancy Branch