



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, PSF, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to dispute an additional rent increase, requesting money owed or compensation under the Act or tenancy agreement, an order for the Landlord to comply with the Act or tenancy agreement, an order for the Landlord to provide services or facilities required by law, to allow the Tenant to reduce rent for services or facilities agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the Landlord was interruptive, argumentative and threatening during the course of the hearing. The Landlord was cautioned several times and he left the hearing before it was concluded.

Issue(s) to be Decided

Is the Notice of Rent increase valid?

Is the Landlord complying with the Act or tenancy agreement?

Has the Landlord removed or failed to provide facilities or services agreed upon, but not provided?

Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy began November 1, 2009, with the parties entering into a written tenancy agreement.

The Tenant testified that at 8:30 p.m. on November 1, 2011, the Landlord attended the rental unit without giving her prior notice and threatened to evict her. The Tenant testified that the Landlord was threatening her because her rent cheque was not available to the Landlord at 9:00 a.m. that morning. The Tenant testified she left two cheques, one for November and one for December 2011, for the Landlord in the mailbox on November 1, 2011. The Landlord was able to get the cheques from the mailbox at that time. According to the testimony of both parties, an argument occurred on the evening of November 1, 2011, while the Landlord was at the rental unit.

The Tenant was upset that the Landlord threatened her with eviction. On November 2, 2011, she drafted a letter to the Landlord explaining her concerns with his inappropriate behaviour. The Tenant did not send the letter to the Landlord until November 15, 2011.

On November 18, 2011, the Landlord gave the Tenant a Notice of Rent increase, increasing the monthly rent of \$575.00 by \$40.00, or approximately 6.9%.

On November 18, 2011, the Landlord also wrote the Tenant a letter telling her the garden plot she had been using for free for the past two years is no longer available for her use.

In this letter, the Landlord also informs the Tenant she is not able to use a shed at the property after December 31, 2011, which she used for storage of her gardening tools and other property. The Landlord also tells the Tenant to remove a car transmission left beside the storage shed and to return the key to the shed to the Landlord.

The Landlord finishes the letter by informing the Tenant she is no longer able to park on the property and that the tenancy agreement sets out that there is street parking only.

The Tenant testified she began using the garden plot and shed sometime in 2010. She testified that the tenancy agreement has no terms on the use of the garden or the shed. The Tenant also testified that she is not able to get into the shed as the Landlord took the key from her on the night of November 1, 2011.

The Tenant testified that she has parked on the right hand side of the driveway since the tenancy began. She testified that at the time she signed the tenancy agreement there was no hand written statement on it that she had to park on the street. The Tenant also testified she did not receive a copy of the tenancy agreement from the Landlord until this dispute.

In evidence the Tenant supplied a letter from her sister, who was the former tenant in the rental unit. The Tenant's sister's letter confirms that as the prior occupant she had a parking spot on the driveway.

The Landlord testified that he had written on the tenancy agreement that parking was street only at the beginning of the tenancy. Later in the hearing the Landlord testified

that he had to remove parking on the property from the Tenant because of a bylaw. He had submitted no copy of the alleged bylaw into evidence.

The Landlord testified that he had not raised the rent in several years at the rental unit, so he felt justified in raising the rent by \$40.00 per month, or approximately 6.9%

When I asked the Landlord about his understanding of what an allowable rent increase under the Act was, he responded by saying, "I haven't a clue."

The Landlord also testified that he was upset with the Tenant because her boyfriend was at the rental unit when the Landlord was there on November 1, 2011. The Landlord testified that the boyfriend used to live with the Tenant on and off, and that he should not have been in the rental unit.

When I asked the Landlord if he issued the rent increase and letter changing the terms of use of the shed, garden and parking space in order to retaliate against the Tenant, he replied that he, "...retaliated a little bit."

The Landlord stated he took away the key to the shed because the Tenant had lost one key and he did not want her to lose a second one.

The Landlord left the hearing before it was completed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Landlord breached section 43 of the Act when he attempted to raise the rent beyond what is allowed under the Act and regulation.

Under the Act and regulation, rents in 2012 may be raised by 4.3%. This means the maximum amount the Landlord is legally able to raise the rent by is \$24.73. As the Landlord's rent increase exceeds this amount, **I order that the Notice to Increase rent is void and is of no force or effect.** The Landlord may issue a new Notice of rent increase which complies with the Act, however, until then the rent remains at the current level of \$575.00 per month.

I find the Landlord breached section 13 of the Act by failing to give a copy of the tenancy agreement to the Tenant within 21 days after the tenancy began.

I find that the tenancy agreement included parking for one vehicle on the driveway for the Tenant. The first line of the terms of the tenancy agreement sets out, "...for parking one automobile only..." [Reproduced as written.]

Based on his demeanour and on various inconsistencies, I found that the Landlord lacked credibility in his testimony. His evidence was often inconsistent and he continually tried to prejudice the Tenant with his testimony, rather than provide probative evidence.

I further find that the Landlord has altered the tenancy agreement after the Tenant signed it to include the term "street parking only". The handwritten portion appears to be in a different ink and different pen tip size than the rest of the writing on the tenancy agreement. This addition is not initialled by the Tenant. I find that the Landlord has breached the Act and tenancy agreement by unilaterally attempting to change the tenancy agreement, without the consent of the Tenant. **I find and order that the handwritten "street parking only" clause in the tenancy agreement is void and is of no force or effect. It is unenforceable against this Tenant.**

I find that the Landlord has breached section 27 of the Act by trying to terminate the parking, as I find the parking is a material term of the tenancy agreement.

I find and order that the Tenant is entitled to park one vehicle on the right side of the driveway at the rental unit property. The Landlord must not interfere with this and must allow the Tenant to use this parking space.

I find that the tenancy agreement is silent as to the use of the garden and the storage shed. I find that the Landlord is able to remove this from the Tenant without a reduction in rent as there is no value attributed by the tenancy agreement to use of this garden. It was a courtesy extended to the Tenant and the Landlord has withdrawn this courtesy.

The Tenant has until January 31, 2012, to clean up her portion of the garden and to remove her property from the storage shed. The Landlord or an Agent for the Landlord must allow the Tenant reasonable access to the shed to remove her property, to be arranged at a reasonable and mutually convenient time.

The rent in this tenancy is due on the first day of the month. The Act does not specify a time on that day that rent is due by. Therefore, the Landlord may not threaten to evict the Tenant if the rent cheque is not there by 8:30 a.m. on the first day of the month, or even 8:30 p.m. on the first day of the month. In other words, the rent is only late if it is paid after 11:59 p.m. on the first day of the month. The Tenant testified that she gave the Landlord post dated cheques now, and therefore, this should not be an issue again.

The Landlord must provide the Tenant written Notice of when he is attending the rental unit, a minimum of 24 hours in advance of attending the rental unit. The Landlord must comply with the portions of the Act regarding the Notice to give to the Tenant when he wishes to go to the rental unit. The Landlord must also abide by the rules of service for the notice to attend the rental unit. For example, if he posts a notice on the door to enter the rental unit, it is deemed served three days later. The method of service must be included in the calculation as to when the Landlord may attend the rental unit.

I find the Landlord acted in a high-handed manner towards the Tenant when he attended the rental unit without the required notice, threatened to evict her and then retaliated against her and attempted to illegally raise the rent and change the terms of the tenancy agreement.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant has suffered a loss of quiet enjoyment of the rental unit due to the breaches of the Act and tenancy agreement by the Landlord. I award the Tenant the sum of **\$200.00** for loss of quiet enjoyment for November of 2011.

I also award the Tenant her filing fee for the Application of **\$50.00**.

Therefore, I find the Tenant has established a monetary claim of \$250.00 against the Landlord. The Tenant may deduct the sum of \$250.00 from one rent payment to recover this amount.

I order the Landlord to comply with the Act and the terms of the tenancy agreement. I am enclosing a copy of a Guidebook for Tenancies in British Columbia for the use of Landlord. The book explains the rights and obligations of the Landlord and the Tenant under the Act.

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 20, 2011.

Residential Tenancy Branch