



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute a rent increase and to obtain an Order to have the Landlord provide services or facilities required by law.

Service of the hearing documents, by the Tenant to the Landlord, was done personally in accordance with section 89 of the *Act*, May 3, 2012. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with the *Act*.

The Tenant and her witnesses appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Landlord despite him being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Landlord issued a notice of rent increase that breaches the *Residential Tenancy Act* and regulation?
2. If so, is the Tenant entitled to an Order to have the rent increased cancelled?
3. Is the Tenant entitled to an Order to authorize her to change the locks to the rental unit?
4. Is the Tenant entitled to an Order to have the Landlord provide services required by law?

Background and Evidence

The Tenant affirmed that she entered into a verbal month to month tenancy that began on December 15, 2010. Rent is payable on the first of each month in the amount of \$650.00 and before December 15, 2010 she paid the Landlord \$325.00 as the security

deposit. The rental unit is a 2 bedroom basement suite located in a duplex with four rental units (2 upstairs and 2 downstairs). She resides in the unit with her two small children aged 5 and 7.

The Tenant stated that there was no move-in inspection report done and at the time she took possession of the unit there was a pre-existing crack in one of the windows. This crack has become larger from normal use of opening and closing the window and the Landlord has demanded that she have this window fixed. He has threatened to keep her security deposit if she does not repair the window.

The Tenant advised that the Landlord continues to enter her rental unit without prior notice and without knocking. She stated that the Landlord has been standing in front of her living room staring inside her rental unit and appears at the rental unit all the time, unannounced. She has informed him that he needs to provide her with 24 hours notice yet he continues to walk into her unit without proper notice. She has found the Landlord just sitting in her garage for no reason at all.

There are two entry points to her unit, the back door and the door through the garage. She is seeking an order to allow her to change the locks on both doors. She has already changed the garage door lock after the last time the Landlord entered without notice and after she called the police when he was found to be peeking through the window. The police told the Landlord he cannot be at the unit but he continues to be there.

The Tenant said that since the upstairs tenant moved out the Landlord has turned off the heat and refuses to turn it back up again. She ended up calling the Landlord's daughter to get the heat turned up but it is still too cold in the basement to live. Shortly after requesting the heat to be turned on the Landlord told her that her rent would be increased by \$50.00 per month. She said she informed the Landlord that this amount was illegal and he could only increase it 4.3 %. She also told him that she was entitled to three months written notice of a rent increase.

The Tenant stated that the Landlord lives nearby and attends the unit when she has company and he tells them they cannot visit her as they will be using up electricity. Then on April 1, 2012 she was served a notice of rent increase to increase her rent from \$650.00 to \$700.00 per month effective August 1, 2012. She told the Landlord the amount was incorrect and he refused to discuss it with her.

Witness # 1 affirmed she is the Tenant's sister and on three occasions when she has been visiting her sister the Landlord has walked into the unit without notice and without

knocking. He just comes in through the door from inside the garage. She said she also has knowledge that the window was broken before her sister rented the unit.

Witness # 2 affirmed she is a friend of the Tenant and that she attends the unit each weekday to take the Tenant's children to school and bring them back home afterward. She has seen the Landlord peeking inside the windows upon her arrival to the unit on several occasions. She herself has approached the Landlord to ask him what he is doing looking in the windows and he mumbles something which was very hard to understand as English is not his first language, however his daughter speaks English. She has been present when the Landlord's daughter told the Tenant if she does not like the heat being turned off or the rent increase she should move. She said she has witnessed the rental unit without heat and being extremely cold; to the point where the Tenant has been attempting to heat the unit by having the oven turned on.

Witness # 3 affirmed he is the Tenant's step father and that he was at the rental unit when the Landlord gave the Tenant a notice of rent increase for an additional \$50.00 and that this notice was served shortly after she had attempted to get the heat turned back on. He stated he was concerned about his two grandchildren having to live without heat and that he has been there at least three or four different times when the heat has been turned off and it was too cold in the rental unit.

In closing the Tenant advised she wished to gain permission for changing both locks for safety purposes and for an Order to have the Landlord turn up the heat to proper room temperature.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her witnesses.

The evidence supports the Landlord issued the Tenant a notice of rent increase that indicates the rent will be raised from \$650.00 per month to \$700.00 per month effective August 1, 2012. The regulated rent increase for 2012 is 4.3% which provides an allowable rent increase for this case of \$27.95 for a total rent payable after proper three month notice to \$677.95. Accordingly the notice of rent increase issued to the Tenant is invalid and void. The Landlord is at liberty to serve another notice of rent increase, with proper 3 months notice providing it does not raise the rent higher than an amount of \$677.95.

The Tenant requested to amend her claim to include an Order to allow her to change the locks to the rental unit. After careful consideration of the aforementioned, I amended the application to include the request to authorize the tenant to change the locks to the rental unit, in accordance with section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Sections 28 and 29 of the Act stipulate a tenant's right to quiet enjoyment and the landlord's right of entry to a rental unit. (I have listed these sections of the act at the end of this decision for review).

In this case I find the evidence supports the Landlord has and continues to breach the Tenant's right to quiet enjoyment and he has egregiously breached section 29 of the Act by entering the rental unit without proper notice and by peeking inside her window. Therefore I authorize the Tenant to change the locks on the door leading into her suite from the garage and also her back door.

I further Order the Landlord to stop peeking inside the Tenant's windows, effective immediately. If the Landlord fails to comply with this Order the Tenant will be at liberty to seek monetary compensation.

Section 32 of the Act provides that a Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law.

The evidence supports that there is one thermostat to control heat in two separate rental units with the upstairs unit having control of the heat in the lower rental unit. I find that in these circumstances the upstairs rental unit has control of the thermostat which restricts the lower rental unit from having a properly heated rental unit.

Currently the upstairs rental unit is vacant and it is the Landlord who has restricted adequate heat to the Tenant and her family in the lower unit. Accordingly I Order the Landlord to set the thermostat to normal room temperature (21C or 70 F) effective immediately upon receipt of this decision. If the Landlord fails to comply with this order by **May 31, 2012** the Tenant will be at liberty to purchase up to a maximum of 5 electric heaters to heat the rental unit and to deduct the cost of these heaters off of her June 1, 2012 rent with copies of the receipts provided to the Landlord with her rent payment.

I accept the evidence that one window was broken at the onset of this tenancy and the Landlord has refused to have it repaired which has caused the crack to increase after

normal use. Therefore I Order the Landlord to have the window repaired in the rental unit no later than June 30, 2012.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Notice of Rent increase effective August 1, 2012, is HEREBY CANCELLED and is of no force or effect.

The Tenant is HEREBY authorized to change the locks to the rental unit on the door entering from the garage and the back door.

The Landlord is HEREBY ORDERED to comply with the *Residential Tenancy Act*, pursuant to section 62 of the Act.

The Landlord is HEREBY ORDERED to set the heating thermostat to normal room temperature (21C or 70 F) effective **IMMEDIATELY**.

The Landlord is HEREBY ORDERED to repair the broken window no later than **June 30, 2012**.

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: May 28, 2012.

Residential Tenancy Branch

Protection of tenant's right to quiet enjoyment

28 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.

Landlord's right to enter rental unit restricted

29 (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:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).