



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, MNDC, RP, RR, FF

Introduction

This hearing concerns an application by the tenants to dispute a rent increase / for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

The tenants participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the “hearing package”) by way of registered mail, the landlord did not appear. Evidence submitted by the tenants includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was “refused by recipient.”

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on or about November 1, 2009. Monthly rent at the start of tenancy was \$475.00 and a security deposit of \$237.50 was collected. Monthly rent was increased by \$10.00 to \$485.00 effective February 1, 2011. There is no move-in condition inspection report in evidence before me.

In summary, the tenants have long standing miscellaneous concerns about the condition of the unit. They allege that the landlord has been either inconsistently or inadequately responsive, or largely unresponsive to repeated requests for certain repairs to be undertaken. The tenants also claim that the landlord has attended the unit without proper notice and has entered the unit in their absence without either proper notice or permission. Further, the tenants object to a rent increase to become effective

October 1, 2012. The landlord informed the tenants of this increase by way of e-mail dated June 3, 2012. Specifically, the rent is to increase by \$20.75 to \$505.75 per month (\$485.00 + \$20.75).

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence, which includes but is not limited to photographs and e-mail exchanges between the parties, and the affirmed / undisputed testimony of the tenants, the various aspects of the tenants' claim and my findings around each are set out below.

ENTRY TO THE UNIT

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, and provides in part as follows:

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;
- (f) an emergency exists and the entry is necessary to protect life or property.

I hereby ORDER that the landlord comply with the above statutory provisions.

The attention of the parties is also drawn to the related statutory provisions set out in section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**, as follows:

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.

Further, the attention of the parties is drawn to Residential Tenancy Policy Guideline #6, which addresses "Right to Quiet Enjoyment."

RENT INCREASE

Section 42 of the Act speaks to **Timing and notice of rent increases**, in part:

42(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.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Further, section 43 of the Act addresses **Amount of rent increase**, providing in part:

43(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.

The legislation provides that a rent increase coming into effect in 2012 is limited to

4.3%. Accordingly, I find that while the rent increase proposed by the landlord is in compliance with this particular provision, the landlord's attention is drawn to the matter of how notice of a rent increase must be "in the approved form." The "approved form" is # RTB - 7, a copy of which is attached for reference of both parties. This form can be downloaded from the Residential Tenancy Branch website, as above.

REPAIRS TO THE UNIT

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 of the Act addresses **Emergency repairs**, and provides in part:

33(1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that certain repairs are required in the unit. Accordingly, **I hereby ORDER the landlord to complete the following repairs by no later than September 30, 2012:**

- repair or replace the back door and/or the framing around the back door in order to effect its safe and proper closure;
- repair or replace the dysfunctional lock to the back door;
- replace all rotted wood which forms the stairway access and handrails at the back of the unit;
- replace all rotted wood located adjacent to the front porch, and all rotted wood which forms the front porch and the stairway access to the front porch;
- repair faulty drainage contributing to wood rot around the front porch area;
- repaint the shower;
- repair the “squealing” taps in the bathroom (hire professional plumber if necessary);
- repair the leak around the tap in the bathroom and unclog all household drains (hire professional plumber if necessary);
- repaint the portion of wall in the bathroom which was formerly covered by the old (now removed) toilet;
- repair/patch and repaint walls in both bedrooms;
- insulate and paint the “back room” where the washer and dryer are located;
- have the electrical wiring in the unit assessed by a certified professional electrician and repaired / replaced as necessary;
- remove nesting bees / hornets by way of repair to roof at front entrance

Acknowledging that certain of these repairs have been required for some time and that, despite notification by the tenants, the landlord has not undertaken to fully complete them in a timely manner, and in view of the previous and anticipated inconvenience arising from on-going repairs, I find that the tenants have established entitlement to compensation in the amount of two (2) months’ rent totalling **\$970.00*** (2 x \$485.00).

FILING FEE

As the tenants have achieved a measure of success with their application I find that they have established entitlement to recovery of the **\$100.00*** filing fee.

Following from the above, I find that the total monetary entitlement established by the tenants is **\$1,070.00** (\$970.00 + \$100.00). I order that this amount may be recovered by way of withholding payments toward rent as follows:

AUGUST RENT:

Amount to be withheld: \$485.00

SEPTEMBER RENT:

Amount to be withheld: \$485.00

OCTOBER RENT:

Amount to be withheld: \$100.00

Conclusion

The landlord is hereby ORDERED to complete repairs to the unit as detailed above.

I hereby order that the tenants may withhold payment of rent as detailed above.

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: July 25, 2012.

Residential Tenancy Branch