Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D-Con Equities Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package left by the tenant in the landlord's mailbox on or about May 31, 2013. I am satisfied that the landlord was served with the tenant's dispute resolution hearing package. I am also satisfied that both parties served one another with copies of their written evidence packages in sufficient time to prepare for this hearing.

Issues(s) to be Decided

Should an order be issued to reduce rent for this tenancy due to the loss in value of this tenancy for services and facilities committed to but no longer provided by the landlord? Has the landlord exceeded the allowable amount of rent increase for this tenancy and, if so, should an order be issued regarding the amount of rent increase applied to this tenancy? Is the tenant entitled to recover his filing fee for his application from the landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on May 1, 2012. Monthly rent in that original one-year tenancy was set at $1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $600.00 security deposit paid

on April 27, 2012. According to the terms of the original Residential Tenancy Agreement, a copy of the first page of which was entered into written evidence by the landlord, both parties agreed that this tenancy was to end by April 30, 2013 and the tenant was to vacate the rental unit at that time.

The parties agreed that they entered into a new one-year fixed term Residential Tenancy Agreement that took effect on May 1, 2013 and which is to expire on April 30, 2014. Rather than actually creating a new Residential Tenancy Agreement at that time, the landlord crossed out the existing dates and rent amounts and had the tenant initial the changes, to update the original Agreement. According to the terms of the new Residential Tenancy Agreement, monthly rent for this tenancy increased to $1,230.00.

The landlord testified that he did not raise the tenant's rent by the full 3.8% allowed under the *Act* (and the *Residential Tenancy Regulation*) for 2013. The $30.00 increase in monthly rent was an increase of 2.5%.

The tenant maintained that the landlord had effectively reduced the value of his tenancy because the landlord removed his access to a storage area under the porch of this rental home that he was allowed to use during the first year of his tenancy in this rental home. In his application, the tenant stated that the landlord was trying to charge him an additional fee of $40.00 per month for the use of the storage space under the porch. The tenant stated that "if the landlord now wants or needs this space, I am willing to remove my possessions, but I would like the rent reduced accordingly (by $40)." At the hearing, the tenant testified that his true interest in this matter was to be allowed to store the sports equipment (primarily four windsurfers) in a storage area under the porch of this rental home. Both parties agreed that the landlord had given the tenant oral permission to use this storage space shortly after this tenancy commenced. However, the landlord testified that he had only given the tenant permission to store one windsurfer in that location, noting that there is a storage locker available to the tenant elsewhere in this rental home. The tenant said that the landlord told him that a previous tenant had used the storage area under the porch to store his bicycle, a statement that the tenant interpreted to mean that the tenant could do likewise during his tenancy. The landlord denied having mentioned the availability of the storage area under the porch for the tenant's bicycle. The landlord did not dispute the tenant's testimony that the landlord had given him permission to store his gardening tools in the storage area under the porch.

The landlord maintained that he entered into the oral agreement to allow the tenant to use some of the storage space under the porch because he did not believe that this would impact on the landlord's access to the remainder of that storage area. Over time,

the tenant used an increasing segment of this storage area to the point where the landlord can no longer store his lawnmower and ladders in that area. The landlord rejected the tenant's claim that the storage racks that the tenant has installed has increased the space available to the point where the landlord no longer needs to restrict the tenant's access to this storage area.

The parties presented written evidence of emails exchanged regarding this issue. The landlord did not dispute the tenant's claim that the landlord did not raise concerns about the amount of storage space the tenant was using until the landlord's wife who was acting as the landlord's agent in this matter sent the tenant a September 29, 2012 email. When the tenant noted that he had an oral agreement with the landlord, the landlord and his wife did not pursue this further until they entered into negotiations to consider a new tenancy agreement. In March 2013, the landlord advised the tenant in emails that he would only allow the tenancy to continue if the tenant agreed to address the landlord's concerns in the following three areas:

- the tenant's removal of storage items from under the porch which would henceforth be available only to the landlord;
- the tenant's removal of a composter; and
- the tenant's action to deal with an unlicensed vehicle the tenant was storing on the property.

The tenant did not dispute the accuracy of the tenant's following March 25, 2013 email response to the landlord's conditions to continuing this tenancy:

It all sounds good. Let me know when you are back in town.

Analysis

I should first note that a landlord cannot change the terms of a tenancy agreement and reduce the value of a tenancy, even at the end of a fixed term tenancy that subsequently continues. For example, a landlord cannot require an existing tenant whose fixed term tenancy is expiring to pay more than the allowable rent increase set out in the *Act* and the *Regulation* in order to permit the tenancy to continue. A landlord cannot circumvent the rent increase provisions of the *Act* and the *Regulation* by claiming that the tenancy continues as a second "fixed term tenancy" to continue immediately following the expiration of the first fixed term tenancy.

In this situation, both parties initialled that portion of the fixed term tenancy agreement that confirmed that the tenancy was to end and the tenant to vacate the rental unit at the expiration of the initial term of that agreement. As the landlord did not raise the monthly rent beyond the allowable 3.8 % rate of increase established for 2013, the landlord has

not contravened the *Act* or the *Regulation* by introducing monetary terms into the new fixed term tenancy agreement that could not be established if the continuation of the tenancy were by way of a conversion of the initial fixed term tenancy agreement to a periodic (month-to-month) tenancy. As there is no evidence that the landlord increased the tenant's actual monthly rent beyond the 3.8% allowed under the *Act* and the *Regulation* for 2013, I dismiss the tenant's application to dispute the landlord's rent increase without leave to reapply.

The chief issue in contention revolves around the content of the oral agreement entered into between the parties shortly after the tenant moved into the rental unit in 2012. While the content of the oral agreement is in dispute, I find that there is sufficient evidence that the landlord did authorize the tenant to store one windsurfer in the storage area under the porch and to store some gardening tools in that location. However, it would seem that the tenant viewed this very limited authorization to store materials there as permission to store an increasing array of sports and gardening equipment under the landlord's porch. Since the terms of the oral agreement were vague and subject to misinterpretation, the landlord clarified these terms by way of his emails when the tenancy came due for renewal. Although it would have been preferable to have come to an actual written agreement to be entered into either the new tenancy agreement or an addendum to that agreement, that did not occur. While not optimal, I find that the undisputed emails entered into written evidence by the landlord provides the best evidence as to the terms of the understanding the parties had reached when they agreed to continue this tenancy beyond the April 30, 2013 date identified as the date by which the tenant was to vacate the tenancy as set out in the original tenancy agreement. I find the tenant's March 25, 2013 email essentially agreed with the landlord's proposed clarification of the issue of storage under the porch (as well as the two other areas of concern to the landlord) that the landlord viewed as essential to enable the tenant to remain in the rental unit beyond April 30, 2013. The landlord's emails clearly set out that he wanted to obtain clear access to the storage area under the porch as there had been a lack of clarity on the extent to which the tenant could access that area, as a result of the unclear oral agreement between the parties.

Based on the evidence before me, I see little evidence that this tenancy has been devalued as a result of the landlord's revocation of services and facilities that the landlord had committed to provide as part of the original tenancy agreement. Although neither party viewed it as important enough to their applications to provide me with a full copy of their original residential tenancy agreement, I accept that the oral agreement that became unclear did not emerge until after both parties signed the original residential tenancy agreement. This document represents the most detailed and specific statement as to the commitments made by the landlord to convey services and

facilities to the tenant. Based on my understanding of this agreement, it would seem that the landlord did commit in that agreement to provide the tenant with an inside storage locker, a locker that the landlord continues to provide to the tenant. Whether or not the landlord subsequently allowed the tenant to use a portion of the landlord's own storage area under the porch by way of an oral agreement does not alter the terms of the original residential tenancy agreement or the bundle of services and facilities that the landlord originally agreed to provide to the tenant as part of this tenancy. For these reasons, I dismiss the tenant's application for a reduction in rent for the loss in value of his tenancy without leave to reapply.

As I reject the tenant's attempt to enforce his right to access services and facilities that were not provided to him in the original written residential tenancy agreement and in accordance with the powers delegated to me under the *Act*, I order the tenant to remove his belongings from the storage area under the porch of this rental home. The parties are at liberty to enter into some other type of storage arrangement by way of an addendum to their existing residential tenancy agreement should they wish to increase the amount of storage that was conveyed to the tenant beyond that which was set out in the original tenancy agreement.

Conclusion

I dismiss the tenant's application without leave to reapply. As the tenant has been unsuccessful in his application, he bears the cost of his filing fee.

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 15, 2013

Residential Tenancy Branch