Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARGENTIS PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

OPR, MNR, CNR, OLC, MNDC, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated June 2, 2013, an order for a rent abatement for loss of an amenity and an order to force the landlord to comply with the Act or agreement with respect to the rental rate.

The hearing was also convened to deal with the landlord's cross application for an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and a monetary order for unpaid rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?
- Should the landlord be ordered to comply with the Act or agreement?
- Is the tenant entitled to monetary compensation?
- Is the landlord entitled to monetary compensation based on a 10-Day Notice to End Tenancy for Unpaid Rent?
- Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The landlord testified that the start of this tenancy predated the landlord's purchase of the property. The tenant stated that they had lived in the suite for approximately 21 years. The landlord testified that, after the purchase of the property, the landlord felt it necessary to update the existing paperwork and initiated a written tenancy agreement to reflect the new owner's name as landlord.

The landlord testified that on December 19, 2012, a month-to-month tenancy agreement was signed by the new landlord and the tenant, intentionally containing exactly the same terms as the existing agreement, including the monthly rent payable. A copy of this tenancy agreement was submitted into evidence verifying that the contract was signed on December 19, 2012. No copy of the prior agreement was submitted into evidence.

The landlord testified that the tenant's account ledger indicated that no rent increase had been levied for the rental unit in over one year and the landlord therefore issued and served a Notice of Rent Increase at the end of January 2013 increasing the rent from $793.00 per month to $823.00 per month, effective May 1, 2013.

The landlord testified that the tenant failed to pay the new rental rate for the month of May 2013 and only submitted a payment of $793.00, plus the $25.00 parking fee. The landlord testified that the tenant was cautioned that she must pay the new rental rate specified in the Notice of Rent Increase. However, the landlord also granted the tenant a credit of $50.00 in compensation for the loss of use of the elevator which was being serviced. The landlord testified that that the elevator was out of commission for a period of 3 weeks.

The landlord testified that on June 1, 2013, the tenant was supposed to pay $848.00, representing the new rental rate of $823.00, plus the $25.00 parking costs. However, the tenant again only paid $793.00 rent, plus the $25.00 parking fee for June 2013, instead of the new rate shown on the Notice of Rent Increase to be effective May 1, 2013.

The landlord testified that a 10-Day Notice to End Tenancy for Unpaid Rent was issued to the tenant on June 2, 2013 terminating the tenancy effective June 16, 2013. A copy of the 10-Day Notice to End Tenancy for Unpaid Rent was in evidence and indicated that the tenant failed to pay rent of $823.00 due on June 1, 2013.

The landlord is seeking a Monetary Order for $5.00 and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

The tenant disputed the landlord's claim. The tenant's position is that the landlord's Notice of Rent Increase was not valid, based on the fact that a written tenancy agreement was recently signed between the parties on December 19, 2012 and, according to the tenant, the Act does not permit rent to be increased until the one-year anniversary of the signing of the tenancy agreement.

The tenant testified that they signed the written agreement presented to the tenant because it was initiated by the landlord as a requirement of tenancy and the tenant was allegedly assured that there would be no rent increase.

The tenant testified that no rental arrears are owed to this landlord because the landlord's rent increase is contrary to the Act. The tenant's position is that the pre-existing rental rate is still in effect. The tenant testified that because their rent is paid in full, the 10-Day Notice to End Tenancy for Unpaid Rent must be cancelled.

The landlord argued that, although a written tenancy agreement was only signed in December 2012, the newly-signed agreement was merely a reflection of the current verbal month-to-month contract which has always been in place. The landlord pointed out that the written agreement must, therefore, be considered as the same as the original agreement and did not constitute a new tenancy agreement. Therefore, according to the landlord, the Notice of Rent Increase would not be prohibited by the fact that the written agreement was only signed in December 2012.

The landlord testified that, given the fact that the tenant's monthly rent had not been increased since January 2011, the landlord was entitled under the Act to issue a Notice of Rent Increase. The landlord testified that the tenant had no right to ignore the Notice and was not justified in withholding the rent.

With respect to the tenant's application for monetary compensation, the tenant is claiming an abatement of 20% of their rent because of the loss of use of the elevator to their 3rd floor suite for over 3 weeks.

The landlord argued that no compensation was warranted as the elevator was undergoing necessary servicing. The landlord pointed out that, as a courtesy, an abatement of $50.00 was already granted to tenants in the complex.

Analysis: End of Tenancy

I find that the tenant had an existing long-term verbal tenancy agreement that entitled the tenant to possession of the rental unit, along with the rights and responsibilities that formed the terms of the tenancy agreement. I find that this verbal agreement was in place and was still in full effect at the time the property was sold. I further find that the new owners would be bound by this agreement.

I find that, on December 19, 2012, this tenant and the new party, who had purchased the property, signed a document that created a written tenancy agreement between them. According to paragraph 4 of the contract, the written tenancy agreement began on December 4, 2012. I find that the written agreement with the new landlord contained all of the existing terms that were part of the prior verbal agreement that the tenant had negotiated with the previous owner, in compliance with the Act.

According to the Act, oral terms contained in verbal tenancy agreements will be recognized and enforced. Section 1 of the Act, defines "tenancy agreement" as follows:

> ***"tenancy agreement"*** *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

I accept the landlord's testimony that, although there was a prior verbal agreement establishing the tenancy, the parties both agreed to sign a written tenancy agreement with similar terms. However, I reject the landlord's stated position that this written agreement is "exactly the same" as the verbal tenancy agreement.

In fact, I find that the recently signed agreement contains additional terms that were either absent from, or were not likely enforceable under, the verbal agreement based on standard terms under the Act. Examples of some of these enhanced or additional terms would include the imposition of late fees and NSF charges under paragraph 10, restrictions on appliance installation under paragraph 14, a prohibition of pets under paragraph 18 and various instructions or limits relating to bicycles, vehicles, waste management or other matters that were apparently agreed upon between the two parties as enforceable terms under the new written agreement.

I find that this written tenancy agreement commenced on December 4, 2013, as specifically stated within the agreement itself.

In regard to the landlord's argument that the tenant's rent had not been increased within the previous year, I find that this is true. However, section 42 of the Act states that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(My emphasis)

Accordingly, I find that the Notice of Rent Increase issued by the landlord is not compliant with the Act or Regulation and is therefore of no force nor effect.

I further find that the monthly rental rate for this unit is $818.00 which includes $25.00 for parking and that this rate will remain unless and until a compliant Notice of Rent Increase takes effect.

Therefore, I find that the tenant is not in arrears with the rent. Based on the foregoing, I order that the Ten-Day Notice that was issued by the landlord on June 2, 2013 is cancelled.

Tenant's Monetary Claim

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act **or** agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage. (My emphasis)

In regard to whether or not the landlord had violated the Act, I find that, section 32 of the Act requires that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, with regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that the landlord's repair of the elevator was not considered to be a violation of the Act.

That being said, I find that section 27(1) of the Act states that a landlord is not allowed to terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

I find that, if the provision of an elevator was considered to be a material term or essential service, the landlord would be in violation of the Act by restricting it for any duration. However, in any case, I find that, for safety reasons the landlord had no choice as the elevator required servicing.

Section 27(2) of the Act permits a landlord to restrict or eliminate a service or facility, other than an essential or material service, provided that the landlord:

> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Whether the tenant was given the required 30 days written notice or not, I find that the landlord did provide some compensation to the tenant for the loss of the elevator. As a percentage of the prorated rent for 3 weeks, which would be approximately $566.00, I find that the rent abatement granted by the landlord amounted to less than 10% of the rent payable for the 3-week period.

As an arbitrator, I have the authority under section 58 of the Act, to determine issues related to the Residential Tenancy Act and the terms of the tenancy agreement, which creates reciprocal rights and obligations under the contract.

Therefore, in addition to the provisions of the Act, I must also consider whether or not the deprivation of the elevator contravenes the terms of the tenancy agreement or devalues the tenancy.

Given the above, and based on the evidence before me, I accept the tenant's request for a rent abatement of 20%. I find that this amounts to a reduction in the 3-week rent of $113.25. As the landlord has already abated the rent by $50.00, I find that the tenant is entitled to additional compensation of $63.25.

Based on the evidence before me, I find that the Notice of Rent Increase issued by the landlord is not compliant with the Act or Regulation. I hereby order that the Notice of Rent Increase issued by the landlord is cancelled and of no force nor effect.

I further find that the monthly rental rate for this unit is $818.00 which includes $25.00 for parking. I hereby order that this rental rate, of $818.00, will remain, unless and until, a compliant Notice of Rent Increase takes effect.

I find that the tenant is not in arrears with the rent. Based on the foregoing, I order that the Ten-Day Notice that was issued by the landlord on June 2, 2013 is hereby cancelled and of no force nor effect.

Based on the evidence before me, I hereby grant the tenant compensation in the amount of $113.25, comprised of a further rent abatement of $63.25 and the $50.00 cost of the application. I order the tenant to withhold this amount from the next rental payment owed to the landlord.

Conclusion

The tenant is successful in the application. Both the landlord's Ten Day Notice to End Tenancy for Unpaid Rent and the Notice of Rent Increase are cancelled, the rent is ordered to remain at the existing rate and the tenant is granted a rent abatement for loss of services. The landlord is not successful in the application and the claim for an Order of Possession and Monetary Order are dismissed without leave.

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 19, 2013

Residential Tenancy Branch