



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, CNC, LRE, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to the dispute of an additional rent increase - Section 43;
2. An Order cancelling a notice to end tenancy - Section 47;
3. A Monetary Order for compensation - Section 67;
4. An Order that the Landlord to comply with the Act - Section 62;
5. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70; and
6. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not participate in the conference call hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the rent increase in conformance with the Act?

Is the notice to end tenancy valid?

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord in compliance with the Act?

Is the Tenant entitled to restrictions on the Landlord’s right to enter the unit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following sets out undisputed facts and evidence:

The tenancy started on May 1, 2012. Rent of \$1,050.00 is payable monthly on the first day of each month. The Tenants received a notice to end tenancy for cause dated July 23, 2013 and disputes the following reasons provided:

- Tenant has caused extraordinary damage to the unit or property;
- Breach of a material term that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit or property; and
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The Tenants state that there is no basis for the reasons contained in the notice, that the Landlord has previously tried to evict them without grounds for the reasons, and that the Landlord will attempt this again. The Tenants are particularly concerned that the Landlord will try to evict them again for having an occupant in the unit as a breach of a material term.

On August 19, 2013 the Tenant received notice of rent increase from the Landlord. The notice of rent increase is dated August 19, 2013 and increases the rent by \$250.00 payable on September 1, 2013. The Tenant has not paid the rent increase amount for September 2013 and disputes that the increase conforms to the Act.

The Landlord attended the unit on August 19, 2013 with less than the required notice to the Tenant. The Landlord had informed the Tenants by email that she would not be entering the unit without them present on this date. The Tenants were not present but a

guest was present on this date. The guest indicated that the Landlord should not enter the unit however the Landlord did enter the unit and proceeded to take photos of the unit. On this same occasion the Landlord called the police to have the guest removed claiming a disturbance by the guest. The guest left the rental property upon the request of the police. As the Tenants have been concerned about the Landlord's behavior from previous incidents, the Tenant had placed a web cam on the property capturing the incidents on this date. After the guest left the property willingly, the Landlord pulled out the Tenant's flower and vegetable plants from the garden. The Landlord informed the Tenants that she thought these plants were weeds. The Tenant states that the lilies that were planted were in full bloom and the tomatoes had multiple fruit on the stems. The Tenant states that they do not understand how the Landlord could mistake rhubarb or any of the other vegetable plants, such as cucumbers and carrots, for weeds. The Tenant provided photo, video, audio and email evidence in relation to the above.

The Tenants state that although they put a lot of labour into their garden they are not seeking reimbursement for their time in an effort to mitigate the costs claimed. The Tenant claims \$209.02 in compensation for the cost of the flower seeds and the value of the destroyed produce. These costs are set out per plant in the Tenant's evidentiary materials.

The Landlord has sent the Tenants an email informing them that she can enter their unit once a month without any notice. The Tenants are concerned that the Landlord will enter their unit without notice and are concerned about their privacy and security of their personal property. The Tenants request an order to change the locks and an order that the Landlord comply with the Act.

In the Tenant's amended application, it is noted that submissions were made in relation to unreasonable restrictions on the Tenants' use of the rental property however the Tenants provided no evidence on this matter.

Analysis

Section 42 of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 43 of the Act provides that 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.

Section 5 of the Act provides that landlords may not avoid this Act or the regulations and that any attempt to do so is of no effect. Based on the undisputed evidence of the Tenant, I find that the notice of rent increase given to the Tenants does not comply with the provisions of the Act as set out above and is therefore of no effect.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the tenancy agreement and the Tenant's undisputed evidence of damage by the Landlord, I find that the Landlord had no right of access to the Tenant's garden, that the Landlord breached the tenancy agreement by accessing that garden and destroyed the Tenant's garden causing a loss of the flowers and produce. I find that the Tenant has mitigated and substantiated the costs claimed and is entitled to compensation of **\$209.02**.

Section 29 of the Act provides as follows:

- (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).

Based on the undisputed evidence that the Landlord has failed to provide sufficient notice to attend and enter the unit, has entered the unit without the Tenants' knowledge or permission, and has destroyed the Tenants' property while attending the unit without the Tenants' presence, I find that the Tenant has substantiated an entitlement to change the locks on the unit and to have restrictions placed on the Landlord's right to access the unit. In addition to strict adherence to the above provisions of the Act, I order the Landlord to only attend the rental property when the Tenants are present or when the Tenants agree that the Landlord may enter the rental property without their presence.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. As the Landlord failed to attend the Hearing to provide any evidence that the tenancy should end, I find that the notice to end tenancy is not valid and that the Tenant is entitled to a cancellation of this notice.

Considering that neither the notice to end tenancy or the notice of rent increase have been found to be valid and accepting that a previous notice to end tenancy has also been found to be invalid, I strongly caution the Landlord to refrain from serving spurious notices and give the Tenant leave to reapply for compensation should the Landlord serve a future spurious notice under the Act. I strongly encourage the Landlord to seek additional information and assistance from the Residential Tenancy Branch to better understand a landlord's rights and obligations to the tenants under the Act.

As the Tenants did not provide any evidence in relation to restrictions on the use of the property, whether by intention or inadvertence, should any issue in relation to restrictions on the Tenant's use of the rental property remain to be resolved, I give the Tenant leave to reapply.

As the Tenant's application has been successful, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$259.02**. I order the Tenant to reduce October 2013 rent payable by **\$259.02**.

Conclusion

The notice of rent increase is not valid and is of no effect.

I order the Tenant to reduce rent payable for October 2013 by \$259.02.

I order that the Tenant may change the locks to the rental unit.

I order the Landlord to comply with the Act and restrict the Landlord's attendance to the rental property as set out above.

The notice to end tenancy is not valid and is cancelled.

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: September 13, 2013

Residential Tenancy Branch

