



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, OLC, PSF

Introduction

This hearing was scheduled in response to the tenant's application to dispute an additional rent increase / to seek an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to provide services or facilities required by law. The tenant attended and gave affirmed testimony.

The tenant testified that he personally served the landlord with the application for dispute resolution and notice of hearing (the "hearing package") on either November 7 or 8, 2013. Despite this, the landlord did not appear.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this tenancy which began on May 1, 2011. Rent is due and payable in advance on the first day of each month. Monthly rent of \$2,000.00 is apportioned as follows: \$1,200.00 for residential unit (trailer) and \$800.00 for shop used by the tenant for Federally-approved production of dried marihuana for medical purposes. The tenant testified that it was clearly understood between the parties at the start of tenancy that the shop would be used for the purpose described above. The tenant also testified that the landlord formally authorized use of the shop for this purpose by way of his signature on documents required by the Federal government.

The landlord issued a 30 day "notice terminating or restricting a service or facility" dated October 31, 2013, and personally served the notice on or about that same date. The notice describes the service or facility as follows:

The part of the shop in which you grow marijuana.

The notice describes the how the service or facility will be “terminated / restricted” as follows:

You can no longer grow marijuana.

The effective date of the notice is shown as November 1, 2013, and the “new rent” is shown as reduced by \$400.00 to \$1,600.00 per month.

The tenant was unable to explain why the landlord has changed his position from what was a negotiated, mutually agreeable use of the shop for Federally-approved medicinal purposes when the tenancy began.

Analysis

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

Section 1 of the Act defines “**service or facility.**” Section 27 of the Act speaks to **Terminating or restricting services or facilities**, as follows:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant’s use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if 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.

Further, Residential Tenancy Policy Guideline # 22 addresses “Termination or Restriction of a Service or Facility.”

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the shop rented by the tenant and included as rental space in the original tenancy agreement, is “essential to the tenant’s use of the rental unit as living accommodation,” and that provision of the shop is “a material term of the tenancy agreement.” Accordingly, the landlord’s “notice of terminating or restricting a service or facility” is hereby set aside, with the result that the shop remains available to the tenant, and rent for the residential unit (\$1,200.00) and the shop (\$800.00) remains unchanged in the total amount of \$2,000.00 per month.

Conclusion

The landlord’s “notice of terminating or restricting a service or facility” is hereby set aside.

All facilities made available in exchange for monthly rent remain unchanged from what was originally agreed to at the start of tenancy, and the total rent per month remains unchanged at \$2,000.00.

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: December 18, 2013

Residential Tenancy Branch

