



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, RR, FF

Introduction

This hearing dealt with a tenants' application for authorization to change the locks; authorize the tenants to reduce rent for repairs not provided; and, other issues pertaining to a non-compliant eviction notice and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural matters

The tenants had indicated they were seeking authorization to assign or sublet in completing their Application; however, the tenants confirmed this was indicated error and requested this request be removed. I amended the application accordingly.

At the commencement of the hearing, the parties were instructed not to interrupt the other party while they were speaking. After more than an hour of hearing time, the female tenant began interrupting the proceeding by speaking out of turn. As I had already heard testimony with respect to the most significant issues identified by the tenants I proceeded to end the teleconference call. Therefore, this decision is based upon the testimony I heard up to that point in time and the written submissions of the parties.

Issue(s) to be Decided

1. Are the tenants authorized to change the locks to the rental unit?
2. Are the tenants authorized to reduce rent for repairs not made?
3. Is it necessary to issue any orders for compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The fixed term tenancy commenced March 3, 2013 and is set to expire February 28, 2015. The tenants are required to pay rent of \$1,800.00 on the 1st day of every month and are responsible for paying for their own utilities. The rental unit is an older house and the tenants reside in the house with their child and pets. The tenancy agreement executed by the parties is silent with respect to pets or a pet damage deposit.

Request to change locks

The tenants seek authority to change the locks to the rental unit because they are aware the landlord entered the rental unit without consent or proper notice on March 13, 2014. The tenants stated they are unaware of any other instance when the landlord entered the rental unit without consent or proper notice.

The landlord acknowledged that he opened the door of the rental unit and placed construction supplies inside the door of the rental unit of March 13, 2014 without first gaining the tenant's consent to enter or giving the tenants proper notice of entry. The landlord testified that after the entry of March 13, 2014 he has not entered the unit without consent or notice. The landlord acknowledged that he is aware that his actions were in breach of the Act and he affirmed that he would not enter the unit again without consent or proper notice.

Request to reduce rent

The tenants submitted that the landlord is aware of several repair issues that remain outstanding and they are requesting a rent reduction until such time those repairs are completed. The tenants requested a rent reduction of \$200.00 per month or the equivalent of their utility bills since the lack of repairs cause them to suffer increased utility bills.

The tenants claim they notified the landlord or the landlord is aware of the following significant repair and maintenance issues:

1. Where a wall was installed in place of a fireplace there is insufficient insulation and siding on the exterior of the house is missing.
2. There are cold zones in the house due to the construction of interior walls to convert the dwelling from a one-bedroom to a two-bedroom.
3. There are no smoke detectors in the house.

More recently, the tenants discovered that the washing machine is supplied with hot water only.

The tenants also included other, less significant repair issues in their written submission that I have included in the analysis section of his decision.

The landlord responded to the tenant's testimony as follows:

1. The space where the fireplace was located is sufficiently insulated; however, the exterior siding has not yet been installed. The landlord was agreeable to having the siding installed by mid-summer.
2. The house was always a two-bedroom house. The only alteration to interior walls was to create a walk-in closet in the master bedroom by making the second bedroom smaller. This alteration did not affect the location of the centre wall in the house or create cold zones. The landlord pointed out that the house is approximately 56 years old and faces north. As such, when there are north winds the house the rooms on the north side will be colder and the house will be more expensive to heat.
3. The landlord is willing to have smoke detectors installed without further delay.
4. The landlord was unaware of issues with the water supply to the washing machine but now that he has heard the tenants' complaint he will investigate the issue and take appropriate action.

In addition to the above, the landlord pointed out that trim is still required since new doors and windows were installed and that the landlord expects to have the trim installed in mid-summer.

Eviction letter

The tenants pointed to a letter dated March 14, 2014 whereby the landlord instructed the tenants to vacate the rental unit by March 31, 2014. The tenants also submitted that the landlord was agreeable to withdrawing the eviction notice if the tenants would sign a new tenancy agreement to require the tenants to pay a pet damage deposit that is not included in the existing tenancy agreement.

The landlord acknowledged the letter is not a valid eviction notice and explained that it was intended to communicate to the tenant that hostile behaviour toward the landlord was unacceptable.

Both parties were informed that any eviction notice issued by a landlord must be in the approved form to be valid or enforceable and that the landlord. Further, any such

eviction notice is disputable by the tenants by making an Application for Dispute Resolution. The landlord was informed of his right to issue warning letters to the tenants where behaviour interferes with his ability to carry on business as a landlord.

Pet damage deposit

The tenants submitted that the landlord has requested they sign a new tenancy agreement and pay a pet damage deposit. The tenants are not agreeable to the additional terms proposed by the landlord and they have refused to sign a new tenancy agreement. The tenants submitted that the advertisement they responded to did not prohibit pets and the landlord did not ask them if they had pets prior to entering into the tenancy agreement. Nor, was anything said about pets when they executed the tenancy agreement.

The landlord stated the tenants did not disclose that they had pets when they viewed the property. The landlord only became aware the tenants had pets when he entered the unit on March 13, 2014. The landlord stated that prior to entering into the tenancy agreement there was a brief discussion whereby the landlord communicated to the tenants that the landlord have permitted pets, on occasion, in the past. The landlord stated that he was relying upon the written tenancy agreement to establish the agreement with respect to pets; however, the tenancy agreement signed by the parties did not contain a pet clause or a requirement to pay a pet damage deposit due to an error or oversight of his bookkeeper.

The landlord had prepared a new tenancy agreement to include a pet clause and requirement for the tenants to pay a pet damage deposit and presented it to the tenants but the tenants did not respond to him after he gave it to the male tenant. The landlord indicated that his preference would be to end this tenancy.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons and orders.

Request to change locks

Although the landlord breached the Act by entering the unit without consent or proper notice on March 13, 2014 I am satisfied the landlord has not violated the Act with respect to unlawfully entry since then. I am also reasonably confident that the landlord will comply with the order I make below; however, in the event he does not the tenants are at liberty to file another Application and seek further remedy.

I ORDER the landlord to comply with section 29 of the Act hereafter. Section 29 is provided below for the parties' reference.

Landlord's right to enter rental unit restricted

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;

(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).

[my emphasis added]

Rent reduction for repairs not made

Under the Act, the landlord's obligations to repair and maintain the property are provided under section 32 and require the following of the landlord:

(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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[my emphasis added]

Upon consideration of the testimony and the written submissions of both parties, I find that it is clear the landlord was aware of several of the repair issues identified by the tenants. During the hearing, the landlord explained that he has not made the repairs he was aware of due to the dispute between the parties. Initially, I took his reference to "the dispute" to mean the Application for Dispute Resolution filed by the tenants; however, upon further reading of the landlord's written submissions, it is clear to me that the landlord has not made the repairs because the tenants refused to sign a new tenancy agreement. I make this finding based upon the following communications found in the landlord's written submission and evidence:

- Exhibit B – text messages exchanged between the parties that start off with the tenant enquiring about repairs which then turn into the landlord seeking a new tenancy agreement as illustrated by the following texts from the landlord to the tenant:
 - Will be back in town Wednesday and will definitely take care of that
 - Hey when's a good time to sign this new contract?
 - Hey when can we get together to go over this revised contract?
 - Any chance I can get you this contract right away?

- The sooner we get it done the sooner I can get things going forward with getting some things done around there, until then it won't be able to get done...
- Landlord's written response to tenants' Application
 - 11. It has always been my intention to deal with the maintenance items that have concerned [name of tenant] from the outset as soon as I had the amended contract in hand.

[my emphasis added]

In light of the above, I find it is necessary for me to impress upon the landlord that the landlord's obligations to repair and maintain the property are statutory and are not dependent upon the tenants entering into a new tenancy agreement. I am concerned that the landlord is using the outstanding repair issues as a tool to unduly influence the tenants to sign a new tenancy agreement that include additional terms they are not agreeable to. As the tenants have no obligation to enter into a new tenancy agreement there was no basis for the landlord to delay in making the repairs required of him under the Act.

Based upon the submissions of both parties, I am satisfied the parties had an expectation that the repairs and maintenance would be done by the landlord shortly after the tenancy began but the landlord has chosen to delay in making the necessary repairs and I find the landlord's deliberate decision to avoid his statutory requirements unreasonable for reasons given above.

In these circumstances, I also find it necessary and appropriate to order the landlord to make repairs. **The landlord is ORDERED to perform the following repairs and maintenance to the residential property:**

No later than May 31, 2014 the landlord must:

1. Install smoke detector(s) as required for the size and type of dwelling.
2. Remove debris and garbage from the exterior of the property (except that belonging to the current tenants).
3. Install a towel rod in bathroom.
4. Clean bathroom fan.
5. Ensure exterior doors and locks are functional.
6. Ensure bathroom door closes and locks properly.
7. Ensure fan and light on range hood are functional.
8. Investigate the tenants' complaint about the washing machine water supply.

Upon completion of the items 1 – 8 above, the landlord shall notify the tenants of such, in writing. If such notification is not received by May 31, 2014 the tenants may withhold \$100.00 from rent payable for June 2014 and every month thereafter until such notification is received.

No later than June 30, 2014 the landlord must:

9. Install the missing siding.
10. Install the missing trim around the windows and doors.
11. Repair any holes in walls and doors.
12. Make the necessary repair to water supply to washing machine so that washing machine is provided hot and cold water.

Upon completion of the items 9 – 12 above, the landlord shall notify the tenants of such, in writing. If such notification is not received by June 30, 2014 the tenants may without \$100.00 from rent payable July 2014 and every month thereafter until such notification is received. This rent reduction is in addition to that authorized for repair orders 1 - 8 above.

I find the tenants' disputed submissions concerning lack of insulation and improper location of the thermostat/cold zones insufficient to make any repair orders other than the ones provided above.

I find the landlord's unreasonable delay in making repairs has diminished the value of their tenancy for which they have paid rent in the agreed upon amount. Where a tenancy has diminished in value or the tenants suffer a loss of use as a result of lack of repairs or maintenance which the landlord knew about, tenants may be granted a rent reduction or monetary compensation by an Arbitrator.

Given the monthly rent of \$1,800.00 and the number of outstanding repair issues, I find the tenants request for a rent reduction of \$200.00 to be within the realm of reasonable. In the absence of utility bills to demonstrate the impact of the outstanding repairs on their utility bills I do not grant the tenants' request to reduce rent by the amount of their utility bills. Nor, do I find that request reasonable as a large portion of their utilities would be attributable to ordinary use of the property. Therefore, I grant the tenants a rent abatement of \$200.00 for each of the following months: March, April and May 2014.

Since the tenants have already paid rent for March, April and May 2014, I authorize the **tenants to deduct \$600.00 from rent payable for June 2014.**

Eviction letter

In order for a landlord to end a tenancy, the landlord must serve the tenants with the appropriate Notice to End Tenancy in the approved form. The approved forms are available from the Residential Tenancy Branch office or website. A notice to end tenancy that is not in the approved form is not a valid or enforceable way for a landlord to end a tenancy.

I find the eviction letter issued March 14, 2014 is not a notice to end tenancy in the approved form and it is of no force or effect.

Pet damage deposit

The Act permits a landlord to include terms in the tenancy agreement prohibiting pets, restricting the size or number of pets, or requiring the tenant to obtain the landlord's permission to keep a pet at the property. The Act permits a landlord to require a tenant to pay a pet damage deposit; however, the Act limits the time when a landlord may require the payment of a pet damage deposit. A pet damage deposit may only be required when the tenancy forms; or, if the tenant acquires a pet during the tenancy and the landlord gives the required permission for the tenant to keep the pet. In either case, the amount of the pet damage deposit payable would be stipulated in the tenancy agreement, which may be up to one-half of the monthly rent.

Residential Tenancy Policy Guideline 31: *Pet Damage Deposits* provides policy statements concerning provisions contained in the Act and Regulations made in accordance with the principles of statutory interpretation and common law. The policy guideline provides that "If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit."

In the case before me, the tenancy agreement executed by the parties was silent with respect to pets and a pet damage deposit. Therefore, the landlord must not require the tenants to pay a pet damage deposit.

Only if the parties enter into a new tenancy agreement that contains a pet and pet damage deposit clause may the landlord require the tenants to pay a pet damage deposit; however, **there is no obligation for the tenants to enter into a new tenancy agreement.**

Filing fee

As the tenants' Application was with merit I award the filing fee to the tenants. The tenants are authorized to deduct \$50.00 from rent otherwise payable to the landlord in satisfaction of this award.

Conclusion

The tenants' request to change the locks has been denied; however, I have ordered the landlord to ensure all future entry complies with section 29 of the Act.

The tenants have been authorized to deduct \$600.00 from rent payable for June 1, 2014 in satisfaction of a rent abatement granted for the months of March, April and May 2014.

The landlord has been ordered to make certain repairs by dates specified in this decision and if the landlord does not comply with those orders the tenants have been authorized to make further deductions from rent payable.

The eviction letter of March 14, 2014 is not a valid notice to end tenancy and is of no force or effect.

The landlord must not require the tenants to pay a pet damage deposit given the terms of the existing tenancy agreement.

The tenants are not obligated to enter into a new tenancy agreement with the landlord and the existing tenancy agreement remains in effect, as it is written, unless: all parties mutually agree to alter its terms or enter into a new tenancy agreement.

The landlord must compensate the tenants for the filing fee they paid for their application. In satisfaction of this award, the tenants are authorized to deduct \$50.00 from rent otherwise payable to the landlord.

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: May 09, 2014

Residential Tenancy Branch

