



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, DRI, RR, FF

Introduction:

This hearing was convened in response cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent and/or utilities, and to recover the fee for filing an Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew her application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that she served the Tenant with the Landlord's Application for Dispute Resolution and Notice of Hearing, via registered mail, although she cannot recall the date. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, to dispute an additional rent increase, for authority to reduce the rent, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that she served the Landlord with the Tenant's Application for Dispute Resolution and Notice of Hearing, via registered mail, although she cannot recall the date. The Landlord acknowledged receipt of these documents.

The Landlord submitted documents to the Residential Tenancy Branch on May 06, 2014. She stated that she sent copies of these documents to the Tenant, via registered mail, on May 07, 2014. She cited a Canada Post tracking number to corroborate that testimony. The Tenant stated that she did not receive these documents.

I find it entirely possible that the Landlord was telling the truth when she stated that the documents were mailed to the Tenant and that the Tenant was telling the truth when she stated that the documents were not received. I find it is possible that the documents were lost or incorrectly delivered by Canada Post.

The Landlord and the Tenant mutually agreed to proceed with the hearing in the absence of the Landlord's evidence, with the understanding that the hearing would be adjourned if it became necessary to physically view one of the Landlord's documents. We were able to conclude the hearing without the need for an adjournment.

The Landlord and the Tenant were given the opportunity to present relevant oral evidence, to make relevant submissions, and to ask relevant questions.

Issue(s) to be Decided:

Is the Tenant entitled to a compensation for rent/utilities overpayment(s) and/or compensation for being without full use of the parking facilities and yard during a portion of this tenancy?

Is the Landlord entitled to compensation for unpaid rent/utilities?

Background and Evidence:

The Landlord and the Tenant agree that the Tenant moved into the rental unit in September of 2012. They agree that they entered into a verbal tenancy agreement, with the Landlord's son acting as an agent for the Landlord, and that a written tenancy agreement was never created.

The Landlord stated that when this tenancy began the Tenant agreed that the rent would be \$1,000.00 per month but that her son told the Tenant she would only have to pay \$800.00 per month until he removed all of his property, which he expected would be January of 2013.

The Tenant stated that she agreed to pay monthly rent of \$800.00 and when this tenancy began there was never a discussion that the rent would increase to \$1,000.00. She stated that the Landlord's son did leave some furnishings at the rental unit, but that had nothing to do with the rent.

The Landlord and the Tenant agree that the Tenant paid rent of \$800.00 per month between October 01, 2012 and August 31, 2012. The parties agree that the Landlord's son informed the Tenant that she was required to pay \$1,000.00 per month, effective September 01, 2013, and that she paid that amount for the period between September 01, 2013 and March 31, 2014.

The Tenant stated that she paid the increased rent because the Landlord's son told her she would have to move if she did not pay that amount. The Landlord stated that the increased rent was charged on the basis of their original verbal agreement.

The Landlord and the Tenant agree that the Tenant did not pay any rent for April or May of 2014. The parties agree that the tenancy ended on May 31, 2014. The Landlord is seeking compensation for unpaid rent from April and May of 2014 and the Tenant is seeking to recover the rent "overpayment" for the period between September 01, 2013 and March 31, 2014.

The Landlord and the Tenant agree that there was no discussion about paying for hydro, cable, and telephone when this tenancy began. The parties agree that the Tenant's son was paying these expenses when this tenancy began.

The Landlord and the Tenant agree that the Landlord's son told the Tenant that she would have to start paying for hydro in February of 2013, although he would keep the hydro bill in his name, and that she would have to put the telephone/cable in her name. The parties agree that the Tenant began paying these expenses in February of 2013.

The Landlord stated that the Tenant did not pay hydro for April or May, for which the Landlord is seeking compensation of \$45.00. The Tenant is seeking compensation for the 16 months she was required to pay the hydro, telephone and cable costs, in the amount of \$145.00 per month. The Tenant stated that the amount of \$145.00 is simply an estimate. Neither party submitted invoices or bills to support their claims.

The Tenant stated that for approximately four months she was unable to use her yard and parking space, for which she is seeking compensation of \$250.00. The Landlord and the Tenant agree that as a result of repairs being done in the yard of the rental unit, the Tenant was unable to use a portion of her yard and she was unable to use her parking space.

The Tenant stated that she was unable to use her parking space for approximately three weeks and that she was given permission to park in a shared parking area, which was not always vacant, in which case she would have to find street parking. The Landlord stated that the Tenant could not use the parking area for approximately two days.

The Tenant stated that between mid-December of 2013 and early May of 2014 her ability to use her grassy area was restricted and that between mid-December of 2013 and mid-April of 2014 her ability to use her patio area was restricted. She said the grass was removed to facilitate repairs; that there was equipment left in her yard and on her patio; and that workers were frequently working in her yard or passing through her yard. She stated that this was particularly problematic for her, as she had a dog.

The Landlord stated that the Tenant's ability to use her patio and grassy area was restricted, as a result of repairs, between mid December and March 21, 2014.

Analysis

Section 13(1) of the *Residential Tenancy Act (Act)* requires landlords to create written tenancy agreements. Written tenancy agreements clarify the terms of the tenancy, including the amount of rent that is due.

In circumstances where the parties do not agree on the amount of rent due, the burden of proving the amount of rent due rests with the Landlord. I find that the Landlord has submitted insufficient evidence to show that when this tenancy began the Tenant agreed that the rent would increase from \$800.00 to \$1,000.00. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the parties reached this agreement or that refutes the Tenant's testimony that they did not reach this agreement.

On the basis of the undisputed evidence, I find that the parties agreed the monthly rent would be \$800.00. In the absence of evidence that shows the parties agreed, at the start of the tenancy, that the rent would increase to \$1,000.00, I find that the rent should have remained at \$800.00 until it was increased in accordance with the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for April or May of 2014. As the Tenant is required to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant owes the Landlord \$1,600.00 in rent for April and May of 2014.

Section 43(1) of the *Act* stipulates that a landlord may increase the rent up to the amount calculated in accordance with the regulations, which for 2013 was 3.8%. On the basis of the undisputed evidence, I find that the rent was increased from \$800.00 to \$1,000.00, effective September 01, 2013. I find that this rent increase exceeds the allowable rent increase for 2013.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase. As the Landlord collected a monthly rent increase of \$200.00 that did not comply with the legislation for the period between September 01, 2013 and March 31, 2014, which is 7 months, I find that the Tenant is entitled to a rent refund of \$1,400.00.

On the basis of the undisputed evidence, I find that hydro, cable, and telephone was included in the rent at the start of the tenancy and that, effective February 01, 2013 the Tenant began paying these expenses, at the direction of the Landlord. I find that these services were provided as a term of the tenancy.

Section 27(2)(b) of the *Act* stipulates that a landlord may terminate or restrict a non-essential service or facility if the landlord 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. As there is no evidence to show that the Landlord reduced the Tenant's rent when the Landlord required her to pay for hydro, cable, and telephone, I find that the Landlord did not have the right to require the Tenant

to pay these expenses. I therefore dismiss the Landlord's claim of \$45.00 for hydro expenses from April and May of 2014.

When making a claim for compensation the party seeking compensation bears the burden of proving the claim, including the amount of the loss. Whenever one party is seeking compensation for damage or loss, the party seeking compensation is obligated to provide sufficient evidence of that loss.

While I accept the Tenant was not obligated to pay for telephone, cable, or hydro costs for any portion of this tenancy, I find that she has submitted insufficient evidence to support her estimate that she paid approximately \$145.00 per month for these expenses. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence, such as a copy of a bill or proof of payment, that supports this estimate. As the Tenant has submitted insufficient evidence to establish the amount of her loss, I dismiss her claim for compensation for these expenses.

On the basis of the undisputed evidence, I find that the Tenant was not able to use her parking space as a result of repairs being made at the residential complex for at least two days. I find that the Tenant submitted insufficient evidence to show that the Tenant was unable to use the parking space for more than two days. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a notice of repair or an email, which corroborates the Tenant's testimony that she was unable to use the space for approximately three weeks or that refutes the Landlord's testimony that she was unable to use it for approximately two days.

I find that being unable to use a parking space for a period of two days to be a minor inconvenience, for which a tenant is not entitled to compensation. I find that to be particularly true when alternate parking arrangements are provided and/or the Tenant is able to park on the street.

On the basis of the undisputed evidence, I find that the Tenant did not have full use of her patio/grassy area for the period of approximately three months. I find that the Tenant submitted insufficient evidence to show that her ability to use these areas was restricted for longer than that amount of time. In reaching this conclusion I was influenced by the absence of evidence, such as a notice of repair or an email, that corroborates the Tenant's testimony that she was restricted from using the grassy area was restricted between mid-December of 2013 and early May of 2014 or that her ability to use the patio was restricted between mid-December of 2013 and mid-April of 2014. In reaching this conclusion I was also influenced by the absence of evidence, such as a notice of repair or an email, which refutes the Landlord's testimony that the Tenant was able to use her grassy area and patio by March 21, 2014.

I find that being denied full use of the patio and grassy area did interfere with the Tenant's right to the quiet enjoyment of the rental unit. Even though the interference was beyond the control of the Landlord, I find that the Tenant is entitled to compensation of \$200.00 for this inconvenience. The amount of this award was based,

in part, on the fact that Tenant had a dog and would typically be expected to use the yard more than a person without a dog, even in the winter. In determining the amount of this award, I did consider that the Tenant's enjoyment of her rental unit would likely have been impacted, to some degree, by the presence of workers in her yard.

I find that both Applications for Dispute Resolution have merit and I therefore find that each party is responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim of \$1,600.00 for unpaid rent. The Tenant has established a monetary claim of \$1,600.00, which includes a rent refund of \$1,400.00 and \$200.00 in compensation for loss of quiet enjoyment of the rental unit. After offsetting the two awards, I find that neither party owes money in regards to these claims.

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: June 05, 2014

Residential Tenancy Branch

