



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LAT, LRE, PSF, RP, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant disputed the additional rent increase requested by the Landlord and sought the following Orders:

1. An Order that the Landlord make repairs to the unit, site or property.
2. An Order that the Landlord provide services or facilities required by law.
3. An Order that the Landlord's right to enter the rental unit be suspended or conditions set with respect to such entry.
4. An Order that the Tenant be permitted to change the locks to the rental unit.
5. An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided

Only the Tenant, and his brother in law, T.N., appeared at the hearing.

The hearing process was explained and the Tenant was asked if they had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not appear at the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Hearing by registered mail on September 23, 2014. A copy of the receipt and tracking number for the registered mail was introduced in evidence. Pursuant to section 90 of the Act, documents served in this manner are deemed served five days later; accordingly, I find that the Landlord was served as of September 28, 2014.

Issues to be Decided

1. Is the Tenant entitled to an Order reducing rent to the original amount agreed upon by the parties pursuant to the Tenancy Agreement?
2. Is the Tenant entitled to an Order that the Landlord make repairs to the unit, site or property?
3. Is the Tenant entitled to an Order that the Landlord provide services or facilities required by law?
4. Is the Tenant entitled to an Order that the Landlord's right to enter the rental unit be suspended or conditions set with respect to such entry?
5. Is the Tenant entitled to an Order that the Tenant be permitted to change the locks to the rental unit?
6. Is the Tenant entitled to an Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The Tenant testified that the rental unit is in a motel, and that all other units are one bedroom, except the subject rental unit which is a small bachelor suite.

The tenancy began in 2006 and the monthly rent was \$350.00. The original Landlord agreed that the Tenant could perform 10 hours a month of yard work and would be paid the sum of \$100.00. The Tenant confirmed he has completed the agreed upon 10 hours a month of yard work each and every month he has lived in the rental unit and that his rent has been reduced by this sum since 2006 such that his monthly rent is \$250.00.

Rent Increase and Landlord's Request for New Tenancy Agreement

The Tenant further testified that in March of 2014, the rental property was sold. The new property manager, B.C., asked the Tenant to sign a new tenancy agreement wherein the Tenant would pay \$400.00 per month. In addition to the concerns over the increased rent, the Tenant refused to sign the new tenancy agreement as previously included items had been removed from the new agreement. Specifically, the Tenant testified that the following items, which were previously included in the original agreement, were removed from the new tenancy agreement:

- Heat
- hydro
- Furnishings
- Laundry facilities
- cable

The Tenant was served a 10 Day Notice for Unpaid Rent or Utilities on August 1, 2014 as he paid \$250.00 in rent, not the \$400.00 sum the new property owner sought. After consulting with an advocate, the Tenant paid the \$400.00 to avoid further action by the Landlord to end the tenancy, but maintains that this is an inappropriate rental increase.

The Tenant sought an Order confirming the \$350.00 monthly rent, as well as the \$100.00 reduction in rent for the Tenant's performance of 10 hours per month of yard work.

Hydro

The Tenant also testified that the Landlord threatened to cut off his hydro if he would not sign the new tenancy agreement. The Tenant testified that on July 11, 2014, the Landlord served notice on all the occupants of the rental building that they intended to shut off the hydro. The Landlord followed through on this threat by doing so on September 17, 2014. The Tenant testified that on September 23, 2014 the hydro was turned back on.

The Tenant sought compensation for the discontinuation of the hydro service for these six days.

Gas heat

The Tenant testified that, on June 26, 2014, the Landlord shut off the gas to the rental building, or otherwise did not heat the building with the gas furnace; at the time of the hearing the gas heat was still inoperable. Rather than heat the building with gas, as had been the case prior to June 26, 2014, the Tenant was forced to heat his unit with electrical space heaters.

The Tenant sought an Order that the Landlord continue the provision of gas heat and/or repair the gas furnace to ensure the rental unit was heated.

Laundry

In April of 2014, the laundry facilities became unusable as another occupant damaged the laundry facilities. At the date of the hearing, the Landlord had not made the necessary repairs.

The Tenant sought an Order that the Landlord repair the laundry facilities and to be compensated for the termination of this facility.

Cable

On May 28, 2014, the Landlord disconnected the Tenant's cable. The Tenant obtained cable in his own name and began paying \$43.00 per month.

The Tenant sought compensation for this amount by way of a reduction of his monthly rent.

Repairs to Tenant's Rental Unit

The Tenant testified that on December 25, 2013, another occupant broke the lock to the Tenant's rental unit. The Tenant requested that the Landlord repair the lock, but as of the date of the hearing the lock was not repaired. The Tenant testified that as his lock is broken, the Landlord is able to enter his rental unit with a butter knife and that consequently the Landlord enters the unit without giving him the proper notice.

The Tenant sought an Order that he be permitted to change the locks.

The Tenant further testified that repairs are required to his ceiling as there is a hole in the ceiling which leaks water.

The Tenant seeks an Order that the Landlord repair the ceiling in the rental unit.

Discussions with Landlord Regarding Tenant's Application to RTB

According to the Tenant, B.C. was dismissed from her employ as property manager, and B.M. (who had been the previous property manager) was reinstated.

The Tenant testified that after filing and serving his Application for Dispute Resolution, B.M. contacted the Tenant and told him not to pay his October rent until after the hearing. Additionally, B.M. offered to accept \$200.00 per month in rent (including the \$100.00 reduction for 10 hours of yard work) if the Tenant would not proceed with the Residential Tenancy Branch hearing. The Tenant testified that while he was pleased the Landlord was willing to reduce his rent, he wished to proceed with other issues noted in his application.

Analysis

Rent Increases

Rent increases are governed by Part 3 of the Act as well as the Regulations. The Tenant did not agree with the rent increase, nor did the Landlord obtain an Order from the director on application under section 43(3). The increase in rent from \$350.00 per month to \$400.00 per month does not comply with either the Act or the Regulations and is therefore of no force. The Landlord cannot unilaterally change the tenancy agreement and as such the original tenancy agreement applies.

I Order that the Tenant's rent be reinstated to \$350.00 per month, with a \$100.00 credit per month for 10 hours of yard work such that the Tenant shall pay \$250.00 per month.

As the Tenant testified that he paid the requested \$400.00 per month on at least one occasion to avoid eviction, the Landlord shall reimburse the Tenant any overpayment.

Termination of Services or Facilities

Section 27 of the Act provides as follows:

Terminating or restricting services or facilities

- 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.

There is no evidence that the Landlord complied with section 27 when disconnecting the Tenant's hydro and cable, nor is there any evidence the Landlord complied with this section when discontinuing the Tenant's gas heat and access to laundry facilities.

I find the Tenant's hydro and gas heat to be essential to the tenant's use of the rental unit as living accommodation and as such the Landlord is prohibited from terminating those services pursuant to section 27(1)(a).

I Order that the Landlord immediately provide heat to the rental unit at no charge to the Tenant.

I find the Tenant's cable and laundry facilities to be a service or facility not essential to the tenant's use of the rental unit as provided for in section 27(1)(a), but more properly services or facilities pursuant to section 27(2) and as such the Landlord was required to give the tenant 30 days' written notice, as well as a rent reduction for the removal of those services or facilities.

Pursuant to sections 65(1)(c) and 67, I Order that the Tenant be compensated for the restriction of the hydro and cable services and discontinuation of the Tenant's gas heat and access to laundry facilities as follows:

1. For the termination of the Tenant's gas heat, the Tenant's rent shall be reduced by:

- a. \$50.00 per month for the months March 2014, April 2014 and May 2014;
 - b. \$25.00 per month for June 2014;
 - c. \$50.00 per month for September 2014, October 2014 and continuing each month thereafter until such time as the Landlord restores the heat to the rental unit;
2. The Tenant's rent shall be reduced by \$25.00 per month commencing April 2014 for the termination of the laundry facilities and continuing every month thereafter until the laundry facilities are restored;
 3. The Tenant's rent shall be reduced by \$43.00 per month commencing May 2014 for the termination of the cable services and continuing every month thereafter until the cable services are restored; and
 4. The Tenant shall be compensated \$50.00 for the termination of the Tenant's hydro for six days in September.

Giving effect to the above, I find that the Tenant's rent shall be as follows:

\$250.00 for March 2014;

\$175.00 for April 2014;

\$132.00 for May 2014;

\$157.00 for June 2014;

\$182.00 for July 2014;

\$182.00 for August 2014;

\$82.00 for September 2014; and

\$132.00 for October 2014 and every month thereafter until the services and facilities are restored.

Total: \$1,292.00

Any payments made by the Tenant in excess of the above, shall be credited to the Tenant and the Landlord can either make a lump sum payment to the Tenant, or reduce his rent accordingly.

Repairs to Rental Unit

I order that the Landlord repair the ceiling in the rental unit within 14 days of the date of this my decision. Should the Landlord fail to make such repairs, the Tenant is at liberty to seek further Orders pursuant to section 67 of the Act.

Tenant's Right to Quiet Enjoyment and Security of Rental Unit

The Landlord's right to enter a rental unit is governed by section 29, and provides that a Landlord must give a tenant no less than 24 hours-notice of their intention to enter the unit or have the permission of the Tenant. There is no evidence that the Landlord complies with this section. The Landlord is directed to comply with section 29 of the Act.

Pursuant to section 31(3), I Order that the Tenant be permitted to change the locks to his rental unit, at the Landlord's expense. The Tenant must provide the Landlord with a key.

Conclusion

I find the Landlord is in breach in the Act, by increasing the Tenant's rent and discontinuing services and facilities. The Tenant's rent is reduced to the original amount pursuant to the tenancy agreement and the Tenant is to be compensated for the reduction in services and facilities. The Landlord is directed to comply with section 29 of the Act with respect to entering the rental unit. The Tenant is also permitted to change the locks at the owner's expense.

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: October 27, 2014

Residential Tenancy Branch

