Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, RR, CNC, FF

Introduction

By amended application the tenant seeks to recover compensation for alleged removal of her parking rights and the laundry facility. She seeks to challenge a rent increase in excess of that permitted by the Residential Tenancy Regulation (the "Regulation") and to cancel two one month Notices to End Tenancy. The first, dated August 6, 2014 claims the tenant has failed to pay a required security deposit. The second Notice, dated August 25, 2014 claims the tenant changed the locks without permission and has thus seriously jeopardized the health safety or lawful right of the landlords or has put their property at significant risk.

There is a third Notice to End Tenancy; a two month Notice to End Tenancy for landlord use of property, dated and served July 30, 2014, to be effective at the end of October 2014. The tenant does not dispute that Notice. Between the hearings September 25 and October 7, she exercised right under s. 50 of the *Residential Tenancy Act* (the "*Act*") and gave the landlords a ten day notice that she would vacated on October 5th. As of the second hearing date October 7th, the tenant had vacated.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

Background and Evidence

The rental unit is a one bedroom suite on the main floor of a converted "carriage house" attached to a heritage home in which the landlords live. The tenancy started in January 2013. The monthly rent was $650.00.

The written tenancy agreement called for a $325.00 security deposit but no date for its payment was specified. The deposit was not paid. The landlord Mr. M. says the tenant didn't have the money at the time and so no date was expressed. He says he made repeated requests for payment over the life of the tenancy but that they were ignored.

The tenant denies any demand but for just before the first one month Notice. She says that she is not required to pay the deposit because the landlords failed to conduct a move-in inspection and prepare a report.

On June 1, 2014 the tenant received a "Notice of Rent Increase" in the approved form, purporting to raise her rent from $650.00 to $700.00 per month effective September 1st.. She determined the increase was not lawful and continued to pay $650.00. The landlords say the rent from a prior tenancy was $900.00 per month and that they gave the tenant a reduction on her promise to do yard work. They say the tenant refused to put that term in writing. The landlords indicate they were not familiar with the rent increase restrictions imposed by the *Act* and Regulation but say the tenant should nevertheless have paid the 2.2% increase prescribed by the law at that time.

The tenancy agreement provides that the tenant would be provided a parking space. Parking on the street is prohibited in that part of the city. For the first nineteen months the tenant parked along the side of the driveway. It is the landlords' undisputed evidence that for that period cars could pass along the driveway beside the tenant's parked vehicle by travelling over a portion of the neighbouring lot, but in May 2014 the neighbour reclaimed that portion, thus preventing the customary passage beside other vehicles parked in the driveway. The landlords says that for two months they were blocked by the tenant's vehicle and had to request of her to move it each time they wanted to use their vehicles. The landlords' gave the tenant another parking space under a carport up the driveway but then the tenant's vehicle could not travel down to the road if the landlords parked their vehicles on the driveway. Tenant says and the landlords dispute that the tenant's van could not fit under the carport entrance. The tenant testifies that she was forced to park on the street at the nearest lawful location two blocks away. The landlords say it was only one block. Ultimately, in July 2014 the landlords' contractors required use of the entire driveway. The tenant claims compensation for the loss of the parking spot.

The tenancy agreement also provides that free laundry is included. It is not disputed that the washing machine ceased to function in late July 2014. The landlords may have implied that the tenant was somehow at fault for its failure but the evidence was very far from proving such an allegation. The landlords have a new washing machine but it has not been installed yet. The tenant says she was required to do her laundry elsewhere twice per month and seeks compensation for the loss of the laundry service.

Sometime during the tenancy the tenant added a type of chain lock to the inside of her door. The lock had a key mechanism that allowed her to lock the door from the outside. She did not obtain approval from the landlords to make this change. The landlord Mr.

M. testified that in late August from his balcony he observed the tenant leaving her premises and using a key to set up the chain lock. That was, he says, his first awareness of the new lock. The Notice to End Tenancy followed shortly. The tenant's position is that the law prohibits her from "changing" the locks and that she has not done. She's only added one, she says, which she only applies when she is at home.

During the October 7th hearing the parties desired to give evidence about events occurring at the premises since the September 25th hearing but they did not relate to the issues raised by the application and so that testimony was refused and what was given will be ignored.

Analysis

Section 31 (3) of the *Act* provides:

> **Prohibitions on changes to locks and other access**
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> 31 (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

A tenant's right to exclusive possession to her rental unit is subject only to a very limited right of entry retained by the landlord. That right is limited but is a vital right. Obviously a landlord must have access in the event of an emergency or to gain access upon giving a lawful notice to enter. Those rights are exercisable whether or not the tenant is inside the rental unit at the time. The purpose of s. 31(3) is to make clear that the tenant is not to infringe those rights by changing a lock "or other means that give access…" By adding a lock the tenant has changed the means that give the landlord access and is in breach of the subsection.

By doing so the tenant has seriously jeopardized the landlord's lawful right of entry. The Notice to End Tenancy dated August 25, 2014 was a proper Notice and I dismiss the tenant's application to cancel it. As a result this tenancy ended by operation of law on September 30, 2014.

The two month Notice to End Tenancy was rendered ineffective by the valid August 25th Notice. The tenant is not entitled to any of the tenant compensation connected with a two month Notice, flowing under s. 51 of the *Act*.

In light of this result I need not consider the validity of the other one month Notice to End Tenancy alleging failure to pay a security deposit.

In regard to the parking issue, the tenancy agreement is clear in providing parking as part of the rent. The landlords knew or should have known that reasonable use of parking service was dependent on travel over the neighbour's property and that such use could be ended. That eventuality did not absolve them from carrying out the bargain they made with the tenant. I am not persuaded that the tenant's van could not fit comfortably under the carport offered, but I find that the parking service was effectively removed by late July 2014.

The tenant is entitled to compensation for any resulting inconvenience for the remainder of the tenancy to September 30th. The evidence of inconvenience is scant. It is not clear how far the nearest parking was or how often the tenant had to go to and from her vehicle. I consider that the evidence about what other people may or may not have said about the value of such a parking spot ($150.00 per month) is not particularly relevant. The tenant did not and could not sublet her parking space and she didn't have to pay anything for the alternate parking. Having regard to the available evidence I assess damages for the inconvenience of losing onsite parking at $30.00 per month and I award the tenant $60.00 in that regard.

In regard to the laundry issue, it clearly a free service included in rent. The broken washing machine was not repair or replaced and the tenant is entitled to compensation for any inconvenience she suffered as a result. Again, the evidence about inconvenience is lacking. The tenant says she was required to do her laundry offsite twice a month. It is not apparent that she paid to do so. Having regard to the available evidence I assess damages at $20.00 per month and award the tenant $40.00 in that regard.

In regard to the rent increase, s. 43 of the *Act* provides:

> **Amount of rent increase**
> 43 (1) A landlord may impose a rent increase only up to the amount
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> (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.
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> (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
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> (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

As subsection (5) makes clear, when a landlord imposes a noncomplying increase, as was done here, it is the entire increase that is rendered of no effect, not just that portion of an increase in excess of the permitted amount. It follows that the tenant was not responsible to pay any amount over the $650.00 for September 2014, when the invalid rent increase was to take effect.

Conclusion

The tenant's application to cancel a Notice to End Tenancy dated August 25 2014 is dismissed. This tenancy ended as a result of that Notice on September 30, 2014.

The tenant is entitled to a monetary award totalling $100.00. In light of her limited success I allow recovery of $25.00 of the filing fee. The tenant will have a monetary order against the landlords jointly and severally for the total of $125.00.

At hearing the tenant confirmed her forwarding address to be the Pine Street address noted by hand on the application attached to the inside file cover at the Residential Tenancy Branch. For reasons of privacy it will not be noted in full here.

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 07, 2014

Residential Tenancy Branch