Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR RP RR DRI

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
b) To dispute an early additional rent increase pursuant to section 43;
c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated March 10, 2015 to be effective March 24, 2015 and the tenant confirmed it was served on him. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

The landlord confirmed that they have cancelled the Notice to End Tenancy with the tenant's knowledge and agreement as they discovered their error in issuing the rent increase too early. The remaining issues are whether the tenant has proved on the balance of probabilities that the landlord through act or neglect has not done needed repairs and has also caused him to suffer stress and anxiety for which he should be compensated? If so, to what amount has he proved entitlement?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in September 2001, it is now a month to month tenancy, rent is $775 a month and a security deposit of $325 was paid. The landlord served a Notice of Rent Increase in January 2014 for an increase of 2.2% to be effective May 2014. In November 2014, they served a Notice of Rent Increase of $15 to be effective March 1,

2015 which would result in the monthly rent of $790. They realized their error and served a New Notice of Rent Increase in March 24, 2015 which increased the rent from $775 to $794.37 which the landlord said is within the approved percentage increase for 2015 pursuant to section 43.

The landlord said they were sorry for their error and had informed the tenant, and paid him the $50 filing fee for this hearing (copy of cheque enclosed). They also cancelled the Notice to End Tenancy with his agreement issued for $15 which was for increases.

The tenant claims $5,000 from the landlord for the emotional anxiety and stress caused by the landlord's actions. He said they were calling him all the time and telling him he had to pay or leave by the end of the month and this caused him great stress while he was working. He noted that it was additional stress as he had seen another similar situation where they had re-rented another tenant's suite. He confirmed this all happened in March 2015 and he filed his Application on March 13, 2015. The landlord said that they tried to contact the tenant three times to make sure he understood the significance of a Notice to End Tenancy but he did not return the calls. They also tried to contact him concerning their error but again, he did not return calls. He said that otherwise, they had good relations with the tenant.

The tenant also claims compensation for repairs were not done. The landlord provided evidence of repairs done. The tenant noted the problem now was with the hardwood floors and he provided a photograph of a badly blackened section of the flooring together with other photographs of repairs that had needed to be done. The landlord said that they had had problems accessing the unit to do repairs as the tenant had many belongings in the unit and only a small corridor between. They said that the situation had improved lately and they were able to gain access.

The landlord provided evidence that a visit to the unit was done on March 28, 2015 to identify what had to be done and professionals had corrected the toilet issue, fixed a leak in the wall, fixed the bathroom window and installed a new sink in the bathroom. They noted the hardwood floors were refinished in 2000, the bathroom was retiled and a new kitchen sink and counter top installed in 2009, the stove was replaced in 2009 and the toilet repaired in 2013. The landlord submitted that a refinished hardwood floor is expected to last for 20 years and the tenant's floor was done in 2000; the tenant agreed he had done a condition inspection report on it in 2001 but said he had noted some stains on it even then. The landlord said that to redo the floor would require the tenant to be out of the unit for some days due to the dust and chemicals; he said the stains had penetrated and there was no other option than sanding. The tenant said he planned to take no holidays in the near future but he was sure some floors had been done in

another building while the tenants were living there; the professionals just moved the furniture around. In evidence are letters of the landlord updating the tenant on the progress of repairs, photographs, two Notices of Rent Increase and the Notice to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The Notice to End Tenancy was cancelled by the landlord, the tenant informed on March 24, 2015, he agreed pursuant to Policy Guideline 11 which provides it can be cancelled with consent so this is no longer in issue.

As discussed with the parties in the hearing, the onus is on the tenant to prove on a balance of probabilities that the landlord, through act or neglect, caused severe stress to the tenant by harassing telephone calls and not doing repairs as required by section 32 and 33 of the Act. I find the landlord erred in issuing a premature Notice of Rent Increase in November 2014 for an increase to take effect on March 1, 2015. Section 43 of the Act provides that a tenant may dispute such a Notice. I find the tenant chose not to dispute the Notice for four months and waited until the landlord had issued a ten day Notice to End Tenancy when he did not pay the increased rent in March 2015. While the ten day Notice may have caused stress and anxiety to the tenant, this was only during the month of March 2015. I find he could have mitigated his stress as is his duty pursuant to Policy Guideline 5 by disputing the Notice of Rent Increase in a timely way.

I find insufficient evidence that the landlord harassed him with many telephone calls threatening eviction. I find the landlord's statement credible that they called him three times, left voice mail and a note on his door trying to contact him to resolve the issue. I found the landlord's testimony credible as it was straightforward, supported by a letter sent to the tenant on March 24, 2015 and based on notes they had of trying to contact the tenant without success as he did not return calls. I find furthermore that the landlord acted responsibly and quickly once the tenant disputed the Notice to End Tenancy by recognizing their error, cancelling the Notice to End Tenancy and the Notice of Rent Increase and paying the $50 filing fee to the tenant. However, I find there was some distress caused to the tenant through issuing and trying to enforce a premature Notice of Rent Increase but I find it was for less than one month and could have been avoided if the tenant had exercised his rights to dispute the Rent Increase in a timely manner. Therefore, I find the tenant entitled to a nominal sum of $100 to compensate him for that stress caused by the landlord's actions.

In respect to the claim for repairs, I find the weight of the evidence is that the landlord has done the required repairs except restoring of the hardwood floor. I find the tenant submitted no evidence of written requests to the landlord to do the repairs and I find the weight of the evidence is that delay in repairing may have been caused by the tenant's delay in clearing up his belongings and granting access to subcontractors. I find the parties were unable to resolve the problem in the hearing as the tenant was unable to provide any time he would be absent from the suite and did not provide any evidence that the floors could be fixed while he was in the suite. I find the landlord's position reasonable when they said they would be willing to look at solutions to back up the tenant's assertion that he could remain in the unit without jeopardizing his health and safety while the floor problem was fixed. I find that the refinished floor has a useful life of 20 years according to Residential Tenancy Guideline 40 and the landlord's statements and this floor is only 15 years old to date. I advised the tenant to obtain some evidence of professional advice or estimates to fix the issue and if necessary, to bring an Application to have it fixed. I dismiss this portion of the tenant's claim.

In summary, I find the tenant entitled to the nominal sum of $100 as recognition of his stress caused by the landlord's error. I dismiss the rest of his claim with leave to reapply for floor repair within the legislated time limitation.

Conclusion:

I find the tenant entitled to $100 compensation. I dismiss the remainder of the Application of the tenant with leave to reapply within legislated time limits concerning the hardwood floor issue when and if he obtains evidence of a reasonable solution that will not affect his health and safety. The landlord has paid him the filing fee so none is awarded.

I HEREBY ORDER that the tenant recover $100 compensation for stress by deducting $50 from each of his rent payments for June and July 2015.

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: April 21, 2015

Residential Tenancy Branch