



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, PSF, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause; to dispute an additional rent increase; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on June 30, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for cause?
- Is the tenant entitled to dispute an additional rent increase?

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to provide services or facilities agreed upon but not provided?

Background and Evidence

The tenant provided a copy of the tenancy agreement in documentary evidence. This agreement shows that this tenancy started on May 01, 2014 for a fixed term tenancy until April 30, 2015, after which it continued as a month to month tenancy. The agreement shows there is parking for one vehicle included in the rent. Rent for this unit is \$1,490.00 per month due on the 1st of each month. The tenancy agreement indicates that no security deposit was requested as there is a zero recorded in this section of the agreement.

The tenant testified that the landlord served the tenant with a One Month Notice on her door on June 25, 2015. The tenant received it on that date. The tenant filed her application to cancel the Notice within the required time frame. The Notice has an effective date of July 31, 2015 and indicates on page two of the Notice that the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenant testified that the landlord did not want a security deposit at the start of the tenancy and put a zero in the box as the tenant is a long term friend of the landlord's nephew and the landlord trusted the tenant not to do any damage to the rental unit. The tenant testified that the landlord cannot now come back all these months later and want a security deposit when none was asked for at the start of the tenancy. The tenant seeks to have the Notice cancelled.

The tenant testified that the landlord asked the tenant to start to pay an additional rent increase of \$100.00 per month. The tenant testified that she has not paid this as it is not a rent increase allowable under the regulations. The tenant testified that she provided information to the landlord concerning rent increases but has heard nothing back.

The tenant testified that the landlord meet with the tenant and asked the tenant to give up her parking spot. If the tenant would not do so then the tenant must move out of the rental unit. The tenant refused to give up her parking spot as it is included in the rent and the tenant must have a car as it is essential for her job as a nurse and there is no on street parking around the area of the unit.

The tenant seeks an Order for the landlord to comply with the Act with regard entry to the rental unit. The landlord had emailed the tenant two weeks ago stating she was coming into the unit. The tenant took the day off work to be at the unit; however, the landlord did not show up and no proper notice of entry was ever given.

The tenant seeks to recover her filing fee of \$50.00

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me.

With regard to the One Month Notice to End Tenancy for Cause; if the landlord did not request a security deposit at the start of the tenancy then the landlord is not entitled to end the tenancy 14 months later by stating that a security deposit was not paid within 30 days. The tenancy agreement indicates that no security deposit was requested as the landlord has entered a zero in the boxes showing the amount for the security deposit. I therefore find in favor of the tenant's application to cancel the One Month Notice.

With regard to the tenant's application to dispute an additional rent increase. A rent increase must be requested using an approved Notice and provided three months before the rent increase is to take effect. The rent increase must be no more than the amount allowed under the *Act* which for 2015 is 2.5 percent. It is therefore my decision that the landlord's verbal request to the tenant for a rent increase of \$100.00 is not permitted under the *Act* and the tenant's application to dispute this increase is upheld.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; I find the landlord has verbally requested that the tenant give up her parking space which is included in the rent and in the tenancy agreement. I refer the parties to s.27 of the *Act* which states:

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.

The landlord has also sent the tenant an email advising the tenant the landlord will be entering the rental unit. The landlord did not provide proper notice as required under s.29 of the *Act* as follows:

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;

Consequently, I find the landlord has not complied with s. 27 or s. 29 of the *Act*. The landlord may not take back the tenant's parking space in accordance with s. 27(1) as it is essential to the tenant's use of the rental unit and is included in her rent. I further find that providing an email notice of entry is not permitted.

As the tenants' claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. The tenant is permitted to withhold this amount from her next rent payment for September, 2015 when it is due and payable to the landlord.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, June 25, 2015 is cancelled and the tenancy will continue.

I Order the landlord to comply with s.27 and 29 of the *Act* regarding the tenant's parking space and to provide proper notice to enter the rental unit.

I uphold the tenant's application to dispute an additional rent increase.

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: August 27, 2015

Residential Tenancy Branch

