Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, LRE, LAT, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to dispute an additional rent increase; an order to suspend or set conditions on the landlord's right to enter the rental unit; to authourize the tenant to change locks to the rental unit; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and his wife. This hearing was originally convened on August 26, 2015 but adjourned for reasons outlined in the Interim Decision dated August 26, 2015.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a rent increase; to an order to suspend or set conditions on the landlord's right to enter the rental unit; an order to allow the tenant to change the locks on the rental unit; to a monetary order for loss of quiet enjoyment; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 29, 40, 67, 70, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on August 2, 2013 for a month to month tenancy beginning on August 6, 2013 for a monthly rent of $800.00 plus $50.00 for internet cable/monthly if applicable with a security deposit of $400.00 paid.

The tenancy agreement submitted states that there is an addendum of 7 pages that includes 20 additional terms. I also note that term "I" of the addendum refers to three "schedules" – A, B, and C.

The tenant submits that she was not provided with a copy of the tenancy agreement at the start of the tenancy and received this copy after the disputes in this Application began. She states she does remember seeing and signing each of the Schedules but

she does not remember seeing the addendum – her signature or initials do not appear on the addendum.

I also note that the addendum contains term C entitled “Additional Occupants”. The term outlines that the tenancy agreement is for 1 tenant and that if the tenant intends to have another person move in she must apply to the landlord for approval. If approved the term states that the rent will increase by $250.00 per month.

The tenant had a baby in May 2015 and on July 21, 2015 the landlord provided the tenant with a letter stating that, in accordance with term C of the tenancy agreement, the rent should have increased by $250.00 beginning in May 2015. The letter goes on to say that they would not request any additional rent for May 2015 but that the tenant now owed the landlord $500.00 for June and July 2015. It further states that the landlord wanted this payment by July 28, 2015 and beginning on August 1, 2015 rent would be $1,120.00.

During the hearing the landlord justified the additional rent amount as another occupant will increase the landlord’s operating costs such as utilities which are included in the rent. The tenant stated that the clause was intended for a new adult occupant and that because the new occupant in this case was a baby she shouldn’t have to pay this additional amount. In any event, the tenant disputes that she should have to pay any rent increase.

The landlord testified that they did not increase the rent until July 2015 because they were not sure if the baby was the tenant’s or if she was just visiting. He went on to say that once they determined the baby would be staying they increased the rent. However, I note also that the landlord testified they confirmed the tenant had a baby on or about May 27, 2015.

The landlord provided no further explanation as to why he waited until July to issue his letter. During the hearing, the landlord offered that if I determined that the rent increase was allowed he would not impose it until October 2015.

The tenant submits that despite being able to access her rental unit from the front of the property since the start of the tenancy the landlord is now requiring that she not do so. She states that she used this access to collect her mail; put out her garbage; and access the street, including her guests and deliveries. The tenant seeks to be allowed this access again. The landlord provided no testimony in regard to this issue.

The tenant provided into evidence a letter from the landlord dated June 25, 2015 that requires her to keep off the front grass (her access); not pick flowers, plants, or tree branches without the landlord’s permission; and to remove everything belonging to her from the backyard except her barbecue and patio set. The letter closed by stating “PLEASE keep the space you occupy as small as possible.” The tenant seeks to be able to use the backyard as she previously had access to use it.

The tenant also seeks restrictions on the landlord's right to enter the rental unit; to change the locks; and for limitations on the landlord's monthly inspections.

The tenant provided documentary submissions regarding a number of monthly inspections when there have been altercations between the tenant; her agent and the landlords; where the landlord has had at least 3 people in the unit completing the inspection; the landlord looking into and photographing personal spaces and property (including the freezer and her closet); inconsiderate scheduling of inspections.

The landlord submits he is willing to not have his wife attend the monthly inspections but that he would like to have someone else attend them with him for personal safety. The landlord submits that while the tenant complains about the landlord taking photographs of her personal possessions the landlord takes exception to the tenant's photographic and videographic evidence that was collected without their knowledge.

The tenant states that the landlord, on more than one occasion, has entered the rental unit without adequate notice to enter the rental unit. The tenant has provided written submissions regarding specific times when this access occurred.

The landlord referred to the tenant's communication with the landlord dated October 6, 2015 in which she states: "I would appreciate communication to be via phone to my cell number or via email to [email address]. It is uncomfortable to have you show up at my doorstep unannounced."

The landlord stated that he thought this meant that she wanted all notifications by phone or email. The tenant clarified in the hearing that she only wanted communications between the parties to be conducted this way, she still expects proper notification as is required under the *Act* for entrance into the rental unit.

The landlord submits that he requires access to the mechanical room of the house that includes a sump pump. The parties agree access to the mechanical room is via the rental unit.

The tenant seeks monetary compensation for a loss of quiet enjoyment because of the landlord's behaviour and unprofessional approach in dealing with these issues. In particular the tenant seeks compensation for the cost of police reports ($90.00) and her own administrative costs in dealing with the landlord and preparing for this hearing and filing fees ($425.00). The tenant also seeks compensation in the amount of $100.00 for the cost of a locksmith if she is granted authourity to change the locks of the rental unit.

Analysis

Section 43 of the Act stipulates that a landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations; ordered by the director on an application for an additional rent increase; or agreed to by the tenant in writing.

Section 40 of the *Act* stipulates that a rent increase does not include an increase in rent that is for one or more additional occupants and is authourized under the tenancy agreement by a term referred to in Section 13(2)(f)(iv).

Section 13(2)(f)(iv) requires the tenant agreement to include a term on the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Upon consideration of the tenancy agreement provided by the tenant and the explanations provided by the landlord to specific questions I had to the terms of the agreement, I am satisfied that the tenancy agreement provided is the tenancy agreement entered into by the parties, including the additional terms in the addendum and schedules.

I find that term C of the tenancy agreement complies with the requirements of Section 13(2)(f)(iv) of the *Act* and as a result, pursuant to Section 40, is not considered an rent increase under Section 43.

Occupant is defined in The Canadian Oxford Dictionary as: "a person who occupies, resides in, or is in a place." As the tenant's baby now resides in the rental unit with the tenant I find that the tenant is an occupant. As such, and pursuant to term C of the tenancy agreement addendum I find the landlord can increase the rent by $250.00 per month.

As to the effective date of this increase, while I accept the landlord's generosity to move the effective date to the beginning of October 2015, I find that this effective date would not provide the tenant with an opportunity to determine if she wishes to continue the tenancy at this increased rate or if she wishes to end the tenancy before the increased rent takes effect.

Had the landlord accepted the registered mail when the tenant had served him with notice of the original hearing and prepared for the hearing convened on August 26, 2015, I could have provided this decision to the parties prior to September 1, 2015. This would have allowed the tenant time to provide the landlord with notice to end her tenancy that would be compliant with the *Act* prior to the start of the rent increase, if she so chose.

As such, I order that the landlord may not impose the increased rent amount until November 1, 2015.

Section 27 of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. The section goes on to state that the landlord may restrict or terminate a service or facility that is not essential or a material term if the landlord gives 30 days' written notice of the termination or restriction, and 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.

I find the issues submitted by the tenant for access to the front of the property and the limited use of the backyard space is an attempt by the landlord to restrict services and facilities that were terms of the tenancy agreement. However, I do not find that they are essential or material terms of the tenancy agreement.

As such, I find that the landlord may restrict or terminate these services provided he give the tenant 30 days' notice and reduces the rent in an amount that is the equivalent of the reduction in the value of the tenancy.

As to the amount of the reduction in the value of the tenancy, I make no findings as this specific issue is not before me. However, I caution the landlord to consider the value of excluding an access to the property that would impact the tenant's ability to take out her garbage; collect her mail; or allow her to have guests and deliveries made to her address would be a significant loss in value of the overall tenancy.

Equally, I find that reducing the tenant's usable part of the backyard would have a significant impact on the living space the tenant has enjoyed since the start of her tenancy and would warrant a significant loss in the value of the overall tenancy.

I order that until such time as the landlord issues any notices of a reduction in these services or facilities that are compliant with Section 27 of the *Act* the landlord must not restrict the tenant's usage of the backyard space or access to the rental unit from the front area of the property. I also note that if the landlord is to issue a notice to restrict these (or any) services and the tenant believes the value of the service that the landlord intends to reduce the rent by is insufficient, she may file an Application for Dispute Resolution to have an Arbitrator determine an appropriate value.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

As to the tenant's claim for compensation for the costs of police reports and filing fees, including her administrative costs, I find that these were choices the tenant made in pursuing her claims and are not the responsibility of the landlord to pay. I dismiss this portion of the tenant's claim.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the

director authourizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

Section 70(1) of the Act states the director may suspend or set conditions on the landlord's right to enter a rental unit. Section 70(2) states that if satisfied that a landlord is likely to enter a rental unit other than as authourized under Section 29 the director may order the tenant is authourized to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Allowing a tenant to change the locks of a rental unit without providing the landlord with any access whatsoever is a drastic measure intended to deal with very specific and egregious behaviour on the part of the landlord for inappropriate access to a rental unit. In the case before me, I find that the landlord's behaviour is not sufficiently egregious to warrant a change of locks. However, I am satisfied that the tenant has provided sufficient evidence to establish a need to set certain conditions on the landlord's right to enter the rental unit.

In addition, while the landlord is allowed under the *Act* to complete monthly inspections of the rental unit I find the tenant has established the landlord's actions in conducting these inspections constitutes an invasion of her privacy and goes beyond reasonable purposes.

As such, I make the following orders:

1. If the landlord requires entry into the rental unit for a purpose other than a monthly inspection the landlord must comply with all of the requirements of the *Act* as follows:
    a. Obtain the tenant's permission for access; OR
    b. An emergency exists and the entry is necessary to protect life or property; OR
    c. At least 24 hours and not more than 30 days before the entry provide the tenant with a written notice that includes the purpose for entering (which must be reasonable) and specify the time of the entry (which must be between 8:00 a.m. and 9:00 p.m. I also order that the landlord must provide a precise time of entry and not range of possible times.
2. For the purposes of a monthly inspection the landlord must:
    a. Provide the tenant with a written notice of the date and specific time (not a range of possible times) for the inspection;
    b. The time of the inspection must be a time that is agreeable to the tenant and if it is not the parties must agree upon an alternate time. I note that while the landlord may waive their right to conduct an inspection in any given month the tenant cannot refuse to allow the inspection;
    c. The tenant is allowed to have an agent of her choice act on her behalf and/or be present for an inspection;

d. The landlord must not schedule an inspection for a time that the tenant or her agent is not available to be present, unless by written agreement from the tenant;
e. While I see no reason to order that the landlord is required to bring anyone other than his wife, I also see no reason, based on the evidence before me, that the landlord requires anyone with him. However, if the landlord does wish to take anyone else with him for an inspection he is limited to take only one additional person. I also order that this person is not allowed to complete any portion of the inspection and must remain with the landlord at all times;
f. The landlord must restrict each inspection to relevant matters such as the condition of the rental unit and must not include an inspection of any of the tenant's personal affects or possessions. For the purposes of clarity the landlord must not open or touch anything belonging to the tenant unless allowed by the tenant; and
g. The landlord is allowed to record the condition of the rental unit in any format he chooses, however, if the landlord uses a camera, photographs taken must be only to record the condition of the rental unit and must not include anything of the tenant's personal belongings unless it is relevant to the condition being recorded or it is not possible to separate the personal items from the area of concern.

3. The notice of entry for either an inspection or other reasonable purpose must be served in a manner acceptable under Section 88 of the *Act*, specifically:
    a. By leaving a copy with the tenant;
    b. By sending a copy by ordinary or registered mail to the tenant's home address;
    c. By sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
    d. By leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
    e. By leaving a copy in a mailbox or mail slot for the address at which the person resides;
    f. By attaching a copy to a door or other conspicuous place at the tenant's residence; or
    g. By transmitting a copy by fax to a fax number provided by the tenant.
4. Once the notice is served using one of the above methods the landlord may consider that the notice is deemed served in accordance with Section 90 of the *Act*, as follows:
    a. If served by mail, on the 5th day after it is mailed;
    b. If served by fax, on the 3rd day after it is faxed;
    c. If served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
    d. If served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$50.00** comprised of the fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2(a).

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: September 10, 2015

Residential Tenancy Branch