



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, LRE, DRI, RR, LAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) disputing a rent increase and for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order compelling the Landlord to comply with the Act - Section 62;
3. An Order compelling the Landlord to provide services required by law - Section 65;
4. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit - Section 70;
5. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided - Section 65;
6. An Order allowing the Tenant to change the locks - Section 70;
7. An Order to recover the filing fee for this application - Section 72; and
8. Other.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed that the tenancy has ended. As all the orders being sought by the Tenant with the exception of the claim for compensation and recovery of the filing fee are claims that can only be considered in relation to an ongoing tenancy, I dismiss these claims. The Parties agreed to amend the application to correct the spelling of the second named Landlord. As such the style of cause reflects the correct spelling of the Landlord’s name.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on September 1, 2010 and ended on July 31, 2015. At the onset of the tenancy rent of \$850.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit.

The tenancy agreement provides that rent includes water, gas and electricity and the addendum provides that the Tenant must pay 1/3 of the gas and electrical utility. The Tenant states that there is no requirement for the Tenant to pay for water and sewer and that the Landlord required that the Tenant pay this bill from March 2014 onward. The Tenant claims return of the monies paid to the Landlord for the water bills in the amounts of \$172.00, 34.80, 152.00, 81.35, and 265.31.

The Landlord states that the Tenant was required to pay the water bill from March 2014 onward as this is when the unit became legal and the Landlord believed that the Tenant should pay a portion of these costs.

The tenancy agreement includes an addendum that provides access to the front and back yard for play time "as long as they can manage their own safety and security". The Tenant states that before entering into the tenancy agreement the Landlord assured the Tenant of use of the backyard for her and her child's use including having barbeques and for planting a garden. The Tenant states that when the Tenant refused to accept an oral request from the Landlord for a rent increase, the Landlord required that the Tenant remove her bikes and bench from the back yard and to return the key giving access to the back yard. The Tenant states that as a result her child was not able to play in the back yard and would not bring home friends because of this restriction. The Tenant states that she had to take her child to parks and neighbours' yards for her outdoor playtime. The Tenant claims \$75.00 for each of the 34 months

that the Tenant was not able to use the backyard. The Tenant states that the loss of the backyard was a hardship and that the Tenant started to look for other rentals but given the location required to her child's school and higher rental costs, the Tenant had to just "suck it up" and remain in the unit without a back yard.

The Landlord states that the Tenant was refused access to the back yard because one of the Landlord's dogs nipped at the Tenant's child and so the Landlord fenced the area off. The Landlord states that he did not pay attention to the tenancy agreement when the key was taken from the Tenant and that the Tenant and her child rarely used the back yard anyway. The landlord states that the amount being claimed for the loss is too much and a more reasonable amount would be \$10.00 per month. The Landlord states that the Tenant was initially allowed to keep the bikes in the back yard as a favor.

The Tenant states that the Landlord raised the rent in 2013, 2014 and 2015 by an amount over the allowable rate and claims return of the overpaid rent from the onset of the tenancy. The Landlord states that he called the city and was told that he could raise the rent by 3 or 4% each year and that the Landlord used this amount to calculate the increase for each year.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given that neither the tenancy agreement nor the addendum required the Tenant to pay for sewer and water services I find that the Tenant has substantiated on a balance of probabilities the return of the monies paid for these services in the total amount of **\$505.46** (\$172.00 + 34.80 + 152.00 + 81.35 + **265.31**).

Given the provision for use of the yard as contained in the addendum to the tenancy agreement and considering the undisputed evidence that the Landlord completely disallowed use of the yard, I find that the Tenant has substantiated a loss in the value paid for the tenancy. Accepting the amount claimed as reasonable in relation to the rent

paid, accepting the Tenant's credible evidence of the value placed on having a yard for her child and accepting that the Tenant reduced her loss by taking her child elsewhere to play outdoors, I find that the Tenant is entitled to the amount claimed of **\$2,550.00** (\$75.00 x 34).

Section 43 of the Act provides that a landlord may impose a rent increase only, inter alia, up to the amount calculated in accordance with the regulations. The allowable rent increase for rents to take effect in 2013 was 3.8%, for 2014 was 2.2% and for 2015 is 2.5%. Section 43 further provides that 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. Given the undisputed evidence of the amount that the rent increased by the Landlord for 2013, 2014 and 2015, I find that the Landlord exceeded the allowable increases for these years and that the Tenant is therefore entitled to return of the rent increase paid in the total amount of **\$610.00**.

As the Tenant's application has been successful I find that the Tenant is entitled to recover of the **\$50.00** filing fee for a total entitlement of **\$3,915.46**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,915.46**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court. 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 30, 2015

Residential Tenancy Branch

