



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, ERP

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for an Order requiring the Landlord to make repairs to the rental unit and to dispute an additional rent increase.

The female Tenant stated that on May 18, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch were personally served to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to make repairs?
Has there been a rent increase that does not comply with the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on July 01, 2014;
- when the tenancy began there was no written tenancy agreement;
- on November 12, 2015 the parties entered into a written tenancy agreement which specifies that the tenancy began on July 01, 2014;
- the tenancy agreement that was signed on November 12, 2015 declares that the monthly rent is \$1,200.00;
- rent is due by the first day of each month; and
- on various occasions the parties agreed that the Tenants could withhold all or part of their rent as a means of recovering money owed to the Tenants by the Landlord.

The male Tenant stated that:

- when this tenancy began the parties had a verbal agreement that rent would be \$800.00 per month;
- sometime in September of 2014 the Landlord asked the Tenants to pay rent of \$1,000.00 per month, which the Tenants agreed to pay;
- rent was increased from \$800.00 to \$1,000.00, effective October 01, 2014;
- sometime in February of 2015 the Landlord asked the Tenants to pay rent of \$1,200.00 per month, which the Tenants agreed to pay;
- rent was increased from \$1,000.00 to \$1,200.00, effective March 01, 2015;
- the Tenants have paid the requested rent, either by paying money to the Landlord or deducting all or part of the rent from the amount owed to them by the Landlord.

The Landlord stated that:

- when this tenancy began the parties had a verbal agreement that rent would be \$1,200.00 per month;
- that he has never increased the rent since the tenancy began;
- the Tenants have paid rent of \$1,200.00 per month for the duration of the tenancy, either by paying money to him or deducting all or part of the rent from the amount he owes to the Tenants.

The Landlord and the Tenants agree that the rental unit has a sliding glass door that is several feet above ground level which is designed to provide access to a deck. The parties agree that there is currently no deck beside this sliding glass door.

The Landlord stated that when the tenancy began there was an understanding that the Landlord would pay the male Tenant to build a deck. The male Tenant stated that when the tenancy began there was an understanding that the Landlord would have a deck built, although there was no agreement that the male Tenant would build it.

The Landlord and the Tenants agree that the exterior stairs leading to the rental unit are designed to be temporary. The male Tenant stated that the temporary stairs currently in place are unsafe and do not comply with local building codes. The Landlord stated that the temporary stairs are safe but he does not know if they comply with local building codes.

The Landlord stated that when the tenancy began there was an understanding that the Landlord would pay the male Tenant to build a permanent set of stairs. The male Tenant stated that when the tenancy began there was an understanding that a permanent set of stairs would be built, although there was no agreement that the male Tenant would build the stairs.

Analysis

There is a general legal principle that places the burden of proving a fact on the person who is relying on that fact. In these circumstances the burden of proving that rent was increased in a manner that does not comply with the *Act* rests with the Tenants who are alleging that the rent was increased from \$800.00 to \$1,200.00.

I find that the Tenants have submitted insufficient evidence to establish that the rent was \$800.00 at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that rent was \$800.00 at the start of the tenancy or that refutes the Landlord's submission that it was \$1,200.00 at the start of the tenancy.

In determining that there is insufficient evidence to establish that rent was \$800.00 at the start of the tenancy I note that the Tenants did not submit any form of communication between the parties, such as a letter or an email, that refers to rent being anything less than \$1,200.00.

In determining that there is insufficient evidence to establish that rent was \$800.00 at the start of the tenancy I note that the Tenants did not submit any bank records, cancelled cheques, or other documentation that establishes the Tenants paid less than \$1,200.00 in rent.

I note that the Tenants have submitted various calculations which are based on their submission that rent was \$800.00 per month. As there is nothing to indicate that the Landlord agreed with the figures used for these calculations, I find that these documents have limited evidentiary value.

As the parties cannot agree on the amount of rent due at the start of the tenancy, I find the tenancy agreement to be the most reliable evidence. Although the tenancy agreement was not signed until November 12, 2015, it declares that the tenancy began on July 01, 2014 and that rent was \$1,200.00. I therefore find that rent for this rental unit was \$1,200.00 at the start of the tenancy and that it remains at \$1,200.00.

As the Tenants have submitted insufficient evidence to show that rent was increased from \$800.00 to \$1,200.00, I cannot conclude that the Landlord has imposed a rent increase that does not comply with the *Act*.

On the basis of the undisputed evidence I find that when this tenancy began the Landlord agreed to attach a deck to the rental unit, which has not yet been provided. I therefore Order the Landlord to build a deck on the rental unit that can be accessed by the sliding glass door on the second floor of the rental unit, which complies with local building codes.

In the event the Landlord has not provided the Tenants with a deck by June 30, 2016 I authorize the Tenants, pursuant to section 65(1)(f) of the *Act*, to reduce their monthly

rent payment, effective July 01, 2016, by \$50.00 and to reduce each subsequent monthly rent payment by \$50.00 until such time the deck has been completed.

On the basis of the undisputed evidence I find that when this tenancy began the Landlord agreed to build a permanent set of exterior stairs, which have not yet been built. I therefore Order the Landlord to build exterior stairs leading to the front door of the rental which comply with local building codes.

In the event the Landlord has not provided the Tenants with the stairs by June 30, 2016 I authorize the Tenants, pursuant to section 65(1)(f) of the *Act*, to reduce their monthly rent payment, effective July 01, 2016, by \$50.00 and to reduce each subsequent monthly rent payment by \$50.00 until such time the stairs have been built.

Section 32(1) of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Tenants have submitted insufficient evidence to establish whether the Landlord has failed to comply with section 32(1) of the *Act* by not providing a deck and a permanent set of exterior stairs. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the applicable health, safety, and housing standards and/or photographs of the areas that allegedly do not comply with those standards.

Although the Tenants have submitted insufficient grounds for me to Order the Landlord to repair/replace the deck/stairs pursuant to section 32(1) of the *Act*, I am satisfied that the deck and stairs were promised to the Tenants as a part of the tenancy. I therefore find that the Landlord is obligated to provide the Tenants with the rental unit as it was represented, which includes a new deck and stairs.

Conclusion

The Landlord is required to build a new deck and replace the exterior stairs, as Ordered in this decision.

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: June 03, 2016

Residential Tenancy Branch