Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes DRI CNL MNDC OLC LRE RR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 9:30 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on May 27, 2016, he attempted to personally serve the landlord with a copy of the Amended Application for Dispute Resolution and Evidence Package but the landlord refused service. The tenant then sent a copy to the Landlord by registered mail. A registered mail tracking number was provided in support of service. The original Application for Dispute Resolution and Notice of Hearing was sent to the Landlord by registered mail on May 13, 2016.

Based on the above evidence, I am satisfied that the landlord was served with both the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the landlord.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?
Is the rent increase in compliance with the Act?
Is the tenant entitled to a monetary order for damage or loss?
Is the tenant entitled to reduce rent?
Should the landlord be ordered to comply with the Act, Regulation or Tenancy Agreement?
Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background

The rental unit is a detached house rented by the tenants in its entirety. A written tenancy agreement was entered into and signed by the parties on June 6, 2015. A copy of the written agreement was provided on file. The tenancy began on July 1, 2015 with a monthly rent of $1500.00 payable on the 30th day of each month. The tenant paid a security deposit of $750.00 at the start of the tenancy. The agreement is for a one year fixed term ending on June 30, 2016 and it is stipulated in the agreement that the tenancy may continue on a month-to-month basis or another fixed length of time.

Evidence & Analysis

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

On May 9, 2016, the landlord served the tenant with a 2 Month Notice to End Tenancy. No reason for providing the Notice was checked off on the 2nd page of the Notice.

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The landlord did not provide any reason for issuing the 2 Month Notice and failed to participate in the hearing and provide evidence that the Notice was issued on valid grounds.

Accordingly, the 2 Month Notice to End Tenancy dated May 9, 2016, is hereby cancelled and of no force or effect.

Is the rent increase in compliance with the Act?

The landlord served the tenant with a Notice of Rent Increase dated April 8, 2016, which stipulated a rent increase of $700.00 effective July 1, 2016. The landlord subsequently served a letter to the tenant in which the landlord stated that since the tenant did not accept the rent increase the tenancy would not be renewed and would expire June 30, 2016. Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulation, ordered by the Director or agreed to by the tenant in writing. The allowable percentage rent increase for the calendar year 2016 is 2.9%.

The amount of the rent increase imposed by the landlord does not meet either of the above criteria. The Notice of Rent Increase dated April 8, 2016 is hereby cancelled and of no force or effect.

Is the tenant entitled to a monetary order for damage or loss?

The tenant's application includes a request for a monetary order in the amount of $2000.00 for losses. The tenant claims the landlord has caused emotional stress and breached the tenants right to quiet enjoyment of the rental unit by repeatedly trying to evict the tenants and repeatedly coming on to the property without notice or reason. The tenant provided some pictures taken in the month of May 2016 of the landlord on the property and he alleges the landlord was there without any notice. The tenant also provided a physician's letter dated May 25, 2016 which states tenant N.B. is showing symptoms of stress. The tenant is also claiming compensation for loss of use of the full parking space on the driveway as the landlord dumped some gravel at the front of the driveway. The tenant provided pictures of the gravel on the driveway. The tenant claims parking is included in the tenancy agreement and as a result of the gravel they cannot fully park their two vehicles on the driveway without the second vehicle sticking out onto the sidewalk. The gravel was dumped by the landlord on May 6, 2016. The tenant sent an e-mail to the landlord dated May 19, 2016 requesting her to remove the gravel. The tenant is also claiming the landlord has not fixed the microwave which has not been working since the beginning of the tenancy. The tenant testified that the landlord made a notation on the move-in condition inspection report that the microwave was not working and needed to be repaired. The tenant sent the landlord a letter dated May 13, 2016 requesting repair of the microwave.

The tenant also claims the landlord has not covered the right side of the front entrance steps which can be a falling hazard for their 7 year old son.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inactions that rendered the premises unfit for occupancy for the purposes for which they were leased. Serious examples of frequent and ongoing interference such as entering the rental premises frequently, or without notice or permission may form a basis for a claim of a breach of the covenant of quiet enjoyment.

I dismiss the tenants claim for compensation due to an alleged breach of quiet enjoyment. The tenant has not provided sufficient evidence to support a finding of serious examples of frequent and ongoing interference on the part of the Landlord aside from a few pictures of the landlord on the residential property during the month of May 2016. It appears from these pictures that the landlord is just performing yard work. Further, there is no indication that the tenants ever complained to the landlord about entering the residential property without notice so as to mitigate the loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants claim for compensation due to loss suffered as a result of emotional stress. Although the issuance of the eviction notice may be cause for stress, the tenant's

recourse was to dispute the Notice which they did and they were successful in having the Notice set aside.

I dismiss the tenants claim for compensation due to alleged losses for the unrepaired microwave and gravel on the driveway. As the tenant did not put the landlord on notice requesting a repair of the microwave and removal of the gravel until on or after filing this application, I make no award for loss on these grounds. By not providing the Landlord with a Notice or reasonable time to rectify or repair the deficiency at issue, the tenant has not taken steps to mitigate or minimize the alleged loss.

Is the tenant entitled to reduce rent?

Pursuant to section 65(1)(f) of the Act, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

As the tenant did not put the landlord on notice requesting a repair of the microwave and removal of the gravel until on or after filing this application, I make no award for a reduction of past or future rent on these grounds.

Should the landlord be ordered to comply with the Act, Regulation or Tenancy Agreement?

I order the landlord to repair the microwave and remove the gravel from the driveway within a reasonable time after receipt of this decision. If the landlord fails to make the repairs as ordered within a reasonable time after receipt of this decision, the tenant is at liberty to make another application for compensation for loss and/or a reduction in rent.

With respect to the tenant's request to have the landlord cover the right side of the front steps, I have no evidence before me that having a railing on these steps is a requirement as per the city's building codes. As per the pictures provided by the tenant, the steps appear to be only two steps high. If the tenant has evidence that this is not in compliance with building codes, the tenant can reapply for an order for the landlord to make such repairs.

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter?

Pursuant to section 70 of the Act, the director may suspend or set conditions on a landlord's right to enter a rental unit under section 29 of the Act.

Section 29 of the Act only addresses restrictions on the landlord's right to enter the "rental unit". The "rental unit" is defined in section 1 of the Act to mean the living accommodation. Residential property is broader and includes the rental unit as well as the parcel of land on

which the rental unit is contained. The Act does not require that notice be given for entry onto residential property, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

In this case, as there is no evidence that the landlord entered the "rental unit" other than as authorized under section 29 of the Act, I make no order to suspend or set conditions on the landlord's right to enter the rental unit.

The landlord is cautioned that, unless there is an agreement to the contrary, entry on the residential property by the landlord should be limited to reasonable activities as described above. Frequent and ongoing entry on to the residential property, unless for reasonable activities, may form a basis for a claim by the tenant for a breach of the covenant of quiet enjoyment.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant only partly successful in this application, I find that the tenant is entitled to recover half of the $100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of $50.00.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated May 9, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 17, 2016

Residential Tenancy Branch