



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *DRI, OLC, RP, RPP, PSF, LRE, OPT, MNDC, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, to dispute a rent increase and for an order directing the landlord to have repairs done, comply with the *Act*, provide services, return the tenant's property and suspend the landlord's right to enter the rental unit. The tenant also applied for an order of possession and for a monetary order for compensation and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, in reply to my question the tenant stated that he had possession of the rental unit and therefore I find that his application for an order of possession is moot and accordingly dismissed.

Both parties had English as a second language and did not have interpreters available for assistance. It was difficult to follow certain parts of the testimony of both parties.

Issues to be decided

Has the landlord served the tenant with a rent increase notice that complies with the Regulations? Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to compensation and the filing fee? Is the tenant entitled to the other remedies he has applied for?

Background and Evidence

The tenancy started in April 2015. The rental unit consists of a bedroom in a three level home. The other bedrooms are also rented out separately to individuals.

The kitchen, living room and washroom are shared by all the tenants in the home. The current landlord purchased the property in March 2016. There is no written tenancy agreement. The parties agreed that the monthly rent was \$300.00 but could not agree on the date that rent was due.

On June 11, 2016, the landlord served the tenant with a notice of rent increase in the amount of \$8.70 per month effective October 01, 2016. The tenant is disputing the rent increase.

The tenant stated that he travels to China frequently and had an agreement with the previous landlord to pay \$300.00 per month prorated for the time he spent in the rental unit and \$50.00 per month prorated for the time he was away from the rental unit. The current landlord disagreed with this rental arrangement as alleged by the tenant and stated that the rent was \$300.00 per month and due on the first of each month.

The tenant filed into evidence, copies of rent receipts that are in the Chinese language and translated by the tenant. One of the receipts indicates that the tenant paid for storage space at the rate of \$50.00 per month, prorated for the time he was away from the rental unit.

The landlord argued that the previous landlord charged the tenant \$50.00 per month for the time that he was away from the unit, if he put his possessions into storage. The landlord further added that the tenant did not put his personal items into storage for the times he was away in China and therefore was required to pay the full rent of \$300.00.

The tenant filed a copy of an email dated April 17, 2016 from the landlord to the tenant. The email addresses the rental payment arrangements for the time the tenant was away from the rental unit on three different occasions in 2015. The email states that the former landlord had informed this current landlord that every time the tenant was away the tenant moved his belongings into the storage shed and upon his return he would be assigned an available room, which would not necessarily be the room that he had occupied prior to his trip.. The tenant paid prorated rent for storage at the rate of \$50.00 per month.

The tenant stated that in April 2016, the parties engaged in a conversation and the landlord requested him to move to a bedroom on the main floor in order to carry out renovations. The tenant agreed to do so. The parties disagreed on the remainder of the conversation. The tenant stated that the landlord promised to let him move back into the basement room, upon completion of the renovations.

The landlord denied having made that promise. The parties agreed that there is no documentation of this arrangement.

The tenant stated that the room on the main floor is 50% smaller than the one in the basement and therefore he has applied for the return of 50% of the total rent of \$300.000 paid for each of the months of April, May, June and July 2016. The tenant stated that since he made this application in July, he would also like to claim a refund of \$150.00 (50% of the rent) for each of the months of August and September 2016.

The tenant complained that the landlord had disposed of his bicycle along with two other bicycles that he used for parts. The landlord agreed that the bicycles were junked by his parents who believed that they were not in use. The tenant stated that he had purchased the used bicycles about five years ago at a cost of \$200.00.

The tenant stated that the landlord's parents visit the house without notice. He agreed that they do not enter his private space and restrict their visit to the common areas only. I explained to the tenant that the landlord or his agents were at liberty to enter the common areas for the purpose of cleaning and maintenance.

The tenant is also claiming \$400.00 as compensation for the inconvenience of having to move his belongings to two different rooms, since this landlord took over the property.

The tenant stated that the bedroom is too hot and wants the landlord to install air conditioning. The tenant also complained that the landlord converted the common living room into a bedroom and is claiming \$200.00 as compensation for the loss of the use of a living room. The landlord stated that the room beside the kitchen is furnished for use as a living room and the tenant also has the use of a dining table.

The tenant wants the landlord to repair the door to the storage shed. The landlord agreed to do so.

Analysis

Sections 42 and 43 address the timing, notice and amount of rent increases permitted by legislation

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2016 is 2.9%. Based on the rent increase permitted by the Regulations, the landlord may increase the rent by \$8.70. The tenant received the notice of rent increase on June 11, 2016 and therefore this increase will be effective on October 01, 2016.

Based on the evidence in front of me the tenant was served with a rent increase in the approved form, in a timely manner and in keeping with the increase permitted by legislation. I find that the rent increase complies with legislation and therefore the tenant may not make an application to dispute this rent increase. The tenant's application to dispute the rent increase is dismissed and the tenant will pay rent in the amount of \$308.70 effective October 01, 2016

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

The landlord has agreed to repair the door to the storage shed and accordingly, I order the landlord to do so.

Regarding the tenant's claim for compensation, I find that the tenant had a verbal agreement with the previous owner regarding the amount of rent owed for the times he was out of the country.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

The email filed into evidence by the tenant refers to the rental arrangements between the tenant and the former landlord. Based on the content of this email, I find that the tenant did pay a lower rent when he was not in occupation of the rental unit, but I also find on a balance of probabilities that it is more likely than not that to avail himself of the lower rent, the tenant was required to move his items into storage and was not guaranteed the same room upon his return.

In this case, the tenant was out of the country but did not put his personal belongings into storage and therefore the room was not available to be rented out to another tenant. If the tenant paid the lower rent, the landlord would have suffered a loss of income. Therefore, I find that the tenant is not entitled to the lower rate of rent and accordingly the tenant is not entitled to the return of a portion of rent paid.

The tenant also stated that he was forced to move to a different room while the landlord carried out renovations. The tenant made the move in April from a room in the basement to a room on the main floor that is half the size of the room in the basement. The tenant stated that the landlord did not keep his word about allowing the tenant to return to the room in the basement upon completion of the renovations.

The tenant stated it was a verbal agreement and has applied for the return of half the rent for the months of April 2016 to the present date and for \$400.00 as compensation for the inconvenience of moving twice.

As stated above, the terms of a verbal agreement cannot be enforced if the parties disagree on what the terms were. The landlord denied having promised the tenant the opportunity to move back into the room in the basement upon completion of the renovation. In the absence of any documentation of this alleged agreement, I find that the tenant has not proven his claim and therefore his claim for the return of half the rent paid for the months from April 2016 onwards is dismissed as is his claim for compensation for moving.

The landlord stated that the living room was moved to a different location and the tenant agreed that the room beside the kitchen is used as a living room. Based on the testimony of both parties, I find that the tenant has the use of a living room and therefore has not proven his claim of \$200.00 as compensation for the loss of the living room.

The tenant also claimed \$200.00 to replace the bicycles that were disposed of by the landlord's parents. The tenant testified that two of the bicycles were used for parts to repair the bicycle that he rode. The tenant stated that he had purchased the bicycles used, approximately 5 years ago.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the testimony of both parties, I find that the tenant did lose his bicycles when the landlord's parents disposed of them. The bicycles were old and only one was in use. Based on the tenant's testimony, the age and condition of the bicycles and the fact that they were purchased used, I find it appropriate to award the tenant \$50.00 for his loss.

The tenant wants the landlord to install air conditioning in his room. In the absence of a written tenancy agreement, I am unable to determine whether air conditioning is a service provided by the landlord and included in the rent. Therefore I must dismiss the tenant's application for an order directing the landlord to install air conditioning.

Since the tenant has proven a portion of his claim, I award the tenant **\$50.00** towards the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$50.00 towards the loss of his bicycles plus \$50.00 towards the recovery of the filing fee. The tenant may make a onetime deduction of \$100.00 from a future rent.

Conclusion

- The tenant may make a one-time deduction of **\$100.00** from a future rent.
- The landlord must repair the door of the storage shed within one month of receipt of this decision.
- The tenant will pay the new rent of \$308.70 effective October 01, 2016.
- The remainder of the tenant's application is dismissed.

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 07, 2016

Residential Tenancy Branch