



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, LRE, OLC, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has disputed an additional rent increase, requested an order suspending or placing conditions on the landlords' right to enter the rental unit, an order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence provided.

Preliminary Matters

The landlord confirmed receipt of the initial application made on August 25, 2016 and an amended application made on September 16, 2016, both given within the required time limit. The amended application requested orders related to entry to the rental unit and orders to comply with the Act.

The tenant submitted a number of evidence packages. The landlord confirmed receipt of a 26 page and 10 page submissions within the required time limit. Some evidence supplied by the landlord was meant for a cross-application hearing between the parties scheduled in November 2016. The November 2016 application was reviewed and I established that the matters did not need to be joined with this current application.

The parties were informed that any document referenced during the hearing would be confirmed as before each party.

Issue(s) to be Decided

Has the landlord issued a rent increase that does not comply with the Act?

Must conditions be placed on the landlords' right to enter the rental unit?

Must the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy commenced as a fixed-term on March 9, 2015. The term ended on March 1, 2016; the tenancy has continued on a month-to-month basis. Rent is \$1,395.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$697.50. A copy of the tenancy agreement was supplied as evidence.

The landlord confirmed that a Notice of Rent Increase issued in the approved form on June 18, 2016 included an increase that did not comply with the legislation. The landlord has withdrawn that Notice. The landlord attempted to increase the rent by \$300.00 per month. The landlord had written the tenant asking to cancel the hearing as the landlord now understood an application must be made requesting an additional rent increase.

The tenant set out three attempts made by the landlord to enter the rental unit. Notices of entry were posted to the front door of the rental unit; but the tenant does not use that door, so there were delays in the tenant finding the notices.

The tenant received notice for entry on August 31, 2016; September 1, 2016 and October 1, 2016. The tenant confirmed that the landlord has entered on one of those occasions and that another person was with the landlord. The notice for August 31, 2016 was not received until that date but the tenant allowed the landlord into the unit. The landlord had given notice to enter for inspection, but when the landlord entered the landlord did not look at any repairs that were required in the unit. The tenant said the landlords' attitude has been threatening.

The landlord said that notice was given for August 31 and October 1, 2016 only. The landlord said that the notice for September 1, 2016 was not served to the tenant and that the tenant must have obtained that notice as part of the landlords' evidence supplied to the tenant.

During the hearing section 29 of the Act was reviewed. The landlord confirmed that any future notices of entry would be posted at eye level on the main garage door. This will ensure that the tenant sees the notices. Service of documents was reviewed and it was explained that notice of entry posted would allow entry no earlier than the fourth day after posting.

The landlord asked if entry to the outside of the residential property would be allowed. I explained that any entry to the residential property rented by the tenant, including a yard, must be accompanied by proper notice. It was suggested that if monthly inspections are to occur that any other items requiring attention should be dealt with at

the same time. This would avoid potentially impacting the tenants' right to quiet enjoyment.

Analysis

In relation to the Notice of Rent increase issued on June 18, 2016, I find that the increase clearly exceeded the allowable sum of 2.9% and that it is not enforceable. The landlord would not have succeeded in any attempt to evict the tenant based on that unpaid rent. Before the hearing the landlord had confirmed with the tenant that the increase was not allowable; however, the tenant felt compelled to proceed with the application.

From the evidence before me I find that there is no evidence that the landlord has not complied section 29 of the Act, which provides:

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlord has entered the unit in accordance with the Act. There have been some issues with receipt of the notices of entry issued. The entry made on August 31, 2016

appears to have occurred with the tenants' permission as the tenant allowed the landlord to enter even though the tenant had just received the notice of entry.

The landlord is now aware of the problem with service and has agreed to post any notices on the door to the garage. Further, in order to provide clarity to both parties, pursuant to section 62(3) of the Act I order the landlord to post any notices issued to the tenant, at eye level on the exterior of the main garage entry door. The landlord may also utilize other methods of service, as set out in the Act.

A landlord is allowed to enter a rental unit on a once monthly basis for inspection. There was no evidence before me that supported any abuse of this right by the landlord, as a result I can find no basis to place limits on the landlords' right to enter the residential property. The landlord may have a person accompany them when inspecting and a tenant is not required to be home. A tenant may have an agent present when the landlord enters.

As the Notice of Rent Increase was clearly unenforceable I find that the application has merit and that the tenant is entitled to recover the \$100.00 filing fee from the next months' due.

Conclusion

The Notice of Rent Increase is not enforceable.

All notices issued to the tenant will be posted on the garage door. The landlord may utilize other methods of service as set out in the Act.

The landlord will continue to comply with section 29 of the Act.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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 20, 2016

