Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated December 2, 2016 and for a monetary award for reimbursement of Hydro costs and for damages for a list of complaints regarding the management of the building. He argues that a rent increase was not effective against him.

The list of complaints concern: buzzer issues, the security camera, a cat issue, noise and safety, “escalation” and personal issues and staff evasiveness and escalation.

There has been a previous dispute resolution hearing, held May 5, 2016, at which at least some of these issues were raised. The file number for that dispute is shown on the cover page of this decision.

The tenant’s material indicates that he suffers from mental health issues. At hearing he indicated that he has PTSD, OCD and has seizures. He indicated that he felt capable in representing himself at this hearing. Nothing that occurred during the hearing indicated otherwise.

The landlord has already obtained an order of possession by the “direct request” process pursuant to the ten day Notice to End Tenancy challenged by the tenant in this proceeding. As well, it appears that the tenant has filed an application for review of that direct request decision and order. From a review of the file, it appears that the tenant made this application to challenge the ten day Notice in a timely manner but the application was not discovered when the landlord made its direct request application.

Had the Residential Tenancy Branch been aware of the tenant’s application when it processed the landlord’s direct request application, the direct request would likely have been refused and the matter would have been referred to this hearing.

In these circumstances, the tenant's review application will in all likelihood succeed. The tenant and the landlord's representatives properly agreed to deal with the validity of the ten day Notice at this hearing. As a result, the tenant's application for review of the direct request decision is not necessary and is cancelled.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

It was apparent that the respondent Ms. W. was not the landlord but only an employee of the landlord. Accordingly, the true landlord, a limited liability corporation, has been added as a respondent and the style of cause amended accordingly.

Issue(s) to be Decided

Has the tenant's rent been increased and if so, as of when? Is the ten day Notice a valid Notice resulting in and end of this tenancy? Does the relevant evidence presented during this hearing show on a balance of probabilities that the tenant is owed Hydro charges or that the actions or inaction of the landlord under the various heads listed by the tenant, warrants an award of damages?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in March 2008 under an earlier landlord. The premises have been sold since and the corporate respondent is the current owner, according to Ms. M. for the landlord.

The monthly rent had been $545.00 until last fall. The landlord issued a Notice of Rent Increase to $560.00 in accordance with the *Residential Tenancy Act* (the "*Act*") and Regulation.

Ms. W. for the landlord says she posted the Notice of Rent Increase on the tenant's door about July 15, 2016, to be effective with the November rent.

The tenant says he did not receive the Notice of Rent Increase document until August 11 and that the Notice was dated July 28, 2016.

Neither side presented a copy of the Notice.

The tenant was served with a ten day Notice to End Tenancy for unpaid rent on December 2, 2016. The Notice claimed the tenant had not paid $30.00. That $30.00 was the $15.00 rent increase for the months of November and December.

The tenant's rent is paid direct to the landlord by the welfare office on the tenant's behalf. The amount sent did not increase in accordance with the Notice of Rent Increase.

The date of service of the Notice of Rent Increase is important because under s. 42 of the *Act* a landlord must give a tenant notice of a rent increase at least three months before the effective date of the increase. If a landlord gives a Notice of Rent Increase with an effective date less than three months, the notice takes effect on the earliest date that does comply. And so, if the Notice of Rent Increase was given in July then it would have been effective to raise the November rent a full three months later. If it was given in August then, by the three month rule, it could only have been effective to raise the rent for December and so the $30.00 claimed in the ten day Notice would have been more than the tenant lawfully owed. A ten day Notice to End Tenancy that claims more than is truly owed is invalid.

In support of his monetary claim the tenant submits a copy of the earlier dispute resolution decision. In that decision it is apparent that the landlord acknowledges that it is responsible for Hydro. The arbitrator at that hearing dismissed the issue, assuming the parties would reconcile what was owed but granted the tenant leave to re-apply if they parties could not resolve the matter.

They have not resolved the matter.

The tenant submits Hydro bills showing charges of $371.94 from 2015, $206.02 for charges to May 2016 and $196.29 current charges.

The landlord's representative Ms. M. says the landlord wants to take over the account but to do so the tenant must call Hydro to close his account and he refuses.

Regarding the remainder of his monetary claim the tenant refers to his affidavit filed in the earlier proceeding. He says the landlord has failed to repair his mailbox lock and that he has lost important mail as a result. He says his baseboards were removed for painting a year ago and they have not been reinstalled. He says the landlord does not issue receipts for rent. He says the landlord wouldn't put his name of the front door buzzer and that as a result he receives false buzzes frequently. It appears the buzzer issue was resolved in 2014.

The tenant has a particular complaint about the landlord's maintenance man, G. G. lives above him and makes a lot of noise. G. yells at and converses with people from his balcony. The tenant says G. gets up early and makes noise, thus interfering with the tenant's use of the apartment. He talks to people in the lobby in a loud voice and the tenant can hear him (the tenant's rental unit adjoins the lobby). He says he has complained to Ms. W. about it. She lives in the same building.

The tenant says that he used to be able to view the feed from the lobby security camera on his TV but the landlord converted to digital TV and he lost that ability.

The tenant also raised a pet issue regarding cats but withdrew it at the start of the hearing.

Ms. M. for the landlord says the buzzer issue was something involving an prior landlord and happened before 2014.

She says that G. has good references and has not been the cause of any complaints, but for this tenant's complaint.

Ms. W. for the landlord says that the noise G. makes is normal work noise and it's never before 8:00 a.m..

She says the tenant's mailbox works. He just has to turn the key.

She admits she avoids or is wary of the tenant because he has a habit of spewing obscenities at her.

She says she's just received the tenant's Hydro bills with this application. She thinks the Hydro charges are high.

Regarding the Notice of Rent Increase, Ms. W. says that the landlord's Vancouver central office issued this and other rent increase notices for its various applicable rental units in mid July 2016 and this one was faxed to her on July 15. She recalls that she posted it on the tenant's door on July 15 because that is her son's birthday.

She says she spoke to the tenant about his rent increase in November and he said he wouldn't pay. While the ten day Notice to End Tenancy only demands $30.00, she says the tenant has been abusive in his conduct and so a ten day Notice was issued for this small amount.

Analysis

The Hydro

It is apparent that the tenant's rent always included Hydro. The landlord acknowledged in the earlier hearing that it was responsible for that cost.

On the evidence before me I find that the landlord owes the tenant $774.25 for Hydro charges up to and including the Hydro bill dated December 22, 2016.

The tenant's December 22 Hydro bill indicates that the amount of $196.29 is "past due." It is appropriate for the landlord to check with BC. Hydro to confirm the account is paid up before paying the tenant. I authorize the landlord to pay money directly to Hydro in reduction of any outstanding amount on the account as of December 22, 2016, in reduction of the amount owed to the tenant.

I would make a direction regarding the transfer of the Hydro account into the landlord's name, however the tenant reports that the Hydro has just been cut off by BC Hydro and so I assume that will facilitate the landlord in transferring over the account.

The Ten Day Notice

I prefer the testimony of Ms. W. over that of the tenant regarding service of the Notice of Rent Increase. She has two particular memory keys associated with it; the fax from the central office and her son's birthday.

I find that the Notice of Rent Increase was attached to the tenant's door on July 15, 2016 and was deemed by s. 90 of the *Act* to have been received by the tenant on July 18, 2016.

As a result, the tenant owed the higher rent of $560.00 effective November 1. There is no dispute but that the rent increase was not paid for November or December. The tenant was in arrears of rent of $30.00 on December 2, 2016, the date of the ten day Notice.

Though the tenant is owed money for Hydro, that does not permit him to withhold rent (see s. 26(1) of the *Act*).

The amount claimed in the Notice is small. However, an arbitrator designated by the director under the *Act*, has no power to extend the time for the tenant to pay that rent amount.

The ten day Notice to End Tenancy dated December 2, 2016 was a valid Notice. By operation of s. 46 of the *Act* it has resulted in this tenancy coming to an end on December 13, 2016.

The order of possession granted to the landlord under the direct request process is a valid and enforceable order of possession. The landlord is free to enforce that order at its will.

The Tenant's Damages Claim

Regarding the maintenance man G., the tenant's evidence is of a very general nature; without detail. It leaves no reasonable basis from which to objectively determine that G.'s conduct was of a type to significantly disturb the tenant or was other than what may be associated with the normal conduct commensurate with his job position.

I consider it to be significant that no one else in the apartment building has complained about G.

For these reasons I dismiss the tenant's claims regarding G.

I find that the matter of the buzzer was resolved long ago. The extraordinary delay in bringing any complaint forward is a telling mark of its insignificance. I dismiss this item of the claim.

Regarding the security camera issue, the tenant says it happened "several years ago." There is no evidence that the ability to view the lobby on his TV was a service or facility included in rent under the tenancy agreement and so I dismiss this item of the claim.

Regarding the tenant's claim about "noise and safety" I find it to be in the same category as his various other complaints about G. As well, the tenant speaks of complaints "several years ago." He says that G. counted and bagged cans outside his window every weekend "for a few years." I consider these old complaints to be insufficient in severity to warrant consideration of any monetary compensation.

The tenant also raised an issue concerning rent receipts. It was my view, stated at hearing, that if his rent is being paid directly to the landlord by the welfare office then the

welfare office would have proof of payment, either by cancelled cheque or direct deposit receipt or similar electronic transaction. A landlord is obliged to provide a receipt when rent is paid in cash (s. 26(2) of the *Act*).

Last, the tenant in his written application refers to G. twice threatening someone's life. The tenant did not give details nor evidence to substantiate such an allegation, how he came to be aware of it or how it might have affected him. I therefore decline to consider it as a ground for a monetary award of any kind.

Conclusion

The tenant's application is allowed in part. His application to cancel the ten day Notice to End Tenancy is dismissed. The current order of possession in the landlord's hands is a valid and enforceable order.

The tenant is entitled to a monetary award of $774.25. There is no claim for recovery of any filing fee and so the tenant will have a monetary order against the landlord in the amount of $774.25.

Collection of the debt is subject to the authorization set out above, permitting the landlord to satisfy any current obligation (to December 22, 2016) the tenant may have with BC Hydro.

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: January 15, 2017

Residential Tenancy Branch