Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has disputed an additional rent increase.

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 and to present affirmed oral testimony during the hearing.

Preliminary Matters

The landlord confirmed receipt of the tenants' hearing documents and 41 page evidence submission.

The landlord submitted 51 pages of evidence to the Residential Tenancy Branch (RTB.) That evidence was not given to the tenant; therefore, it was set aside. The landlord said the evidence, with exception of one letter, was the same as that supplied by the tenant.

The deals of the dispute section of the application indicated the tenant also made a claim related to loss of quiet enjoyment. No monetary amount was set out in the application.

Issue(s) to be Decided

Has the landlord imposed an additional rent increase that is not incompliance with the Act?

Has the tenant suffered a loss of quiet enjoyment?

Background and Evidence

The tenancy commenced in September 2013. The tenant and landlord lived on the same residential property. Rent was increased to $1,050.00 several years ago, by mutual agreement. Rent included utilities and cable TV costs.

The tenancy agreement included clause 6, which reads, in part:

> *Subject to clause 13, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1 or 2 above, the rent will increase by $150. per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this Agreement or create a new tenancy.*
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> (Reproduced as written)

The landlord and tenant agreed that throughout the tenancy the tenants' son would come to stay with the tenant. During those periods of time the tenant would pay the landlord an additional $150.00 for each month her son was present.

The tenant supplied a monetary worksheet with the evidence given to the landlord in November, 2016. The tenant did not set out the monetary claim as part of the application, however; the landlord confirmed receipt of that work sheet and an understanding of the monetary claim. Testimony was provided in relation to a claim as follows:

Extra utility fee paid in May 2016	25.00
Extra rent charged September 2016	125.00
Extra rent charged October 2016	125.00
Extra rent charged November 2016	125.00
Loss of quiet enjoyment – return November 2016 rent	1,050.00
TOTAL	$1,450.00

The sum originally claimed for September rent has been reduced as the landlord returned funds to the tenant.

The tenant said that when her son stayed in the home during May 2016 the landlord waived the additional rent that would be payable under clause 6 of the tenancy agreement. The landlord said that the payment for May 2016 was not waived; the tenant just did not pay as she should have.

The tenant paid additional rent in the sums claimed; in September, October and November 2016. The tenant said her son stayed with her for only 13 days in September 2016 and that after September 21, 2016 her son moved to Nanaimo and never stayed in the home again. The tenant claims she has been charged for having a

guest. The tenant wants the funds paid for an occupant over the last three months of the tenancy, returned.

In October 2016 the tenant and landlord signed a document entitled "*Agreement to Above Guideline Rent Increase*" form. The landlord said this form was meant to be used as a method of establishing monthly rent in the sum of $1,175.00 rent. The increase represented the cost of an additional occupant, as set out in clause 6 of the tenancy agreement. The landlord could not tell when the son was staying in the unit or not; so the permanent increase would remove the need to monitor whether the additional occupant was present.

In the past the tenants' son had used the rental unit address as his own. The son works extended periods of time in camp and returns to the rental unit when not working.

The landlord also issued a Notice of Rent Increase, dated "October 2016." The Notice named both the tenant and her son. Rent was to be increased from $1,175.00 to $1,218.46 effective February 1, 2017. The landlord used the sum indicated on the rent increase agreement form as the current rent payable.

The tenant gave notice to vacate at the end of November 2016. During the month of November the landlord gave notice of entry for 13 entries. The tenant said she was not present for each of the entries by the landlord. The tenant said these entries caused a loss of quiet enjoyment equivalent to the last months' rent paid.

The landlord supplied copies of notices of entry that resulted in 8 entries between October 21 and November 18, 2016. Four entries were related to upcoming renovations, three were for prospective tenants and one in late October was for a property appraisal.

The tenant claimed return of $25.00 paid as utilities in May 2016. The landlord said that sum paid was for movies rented by the tenant; not for utilities. The tenant responded that she would have to ask her son if he had rented any movies.

Analysis

Residential Tenancy Branch policy defines occupant as:

> *Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

From the evidence before me I find that the parties had a long-standing agreement that during those months the tenants' son was staying in the rental unit the tenant would pay an additional $150.00; which was reduced to $125.00. This agreement was based on the understanding that when in the unit the tenants' son was an occupant and not a

guest. The tenant explained that this arrangement had been convenient for her son, who worked long periods of time in camp.

Therefore, I find that the agreement between the parties recognized that the tenants' son was not a guest, but a regular occupant, who came and went from the unit. The parties had also agreed that payment under clause 6 of the tenancy agreement would only be made for those months the son actually occupied the rental unit. While this approach is somewhat unconventional, I find there was agreement between the parties. As a result I find that the payment made in September 2016 was appropriate and that portion of the claim is dismissed.

I find that the "*Agreement to Above Guideline Rent Increase*" form signed by the parties has no weight in relation to the clause regarding occupants. This form is meant to record agreement to a rent increase beyond that permitted by the Act. Any agreed increase must be followed by proper Notice of that increase, by issuing three months' Notice in the approved form. That did not occur. The Notice of Rent increase issued in October 2016, effective February 1, 2017, would then have been unenforceable as it was based on an increased sum of rent that had not been properly given.

The son left the unit in September 2016 and did not return. As the tenant paid the additional sum of $125.00 only during the months her son actually occupied the unit, I find that the tenant is entitled to return of the sums claimed that were paid in October and November, 2016 in the sum of $250.00.

Section 28 of the Act provides:

> ***Protection of tenant's right to quiet enjoyment***
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> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
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> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

From the evidence before me I find that the landlord exercised the right provided by section 29 of the Act in accessing the rental unit. The purpose of each access appears to have been reasonable. The landlord was mitigating a possible loss of rent revenue by showing the unit. The landlord was also taking steps to complete some renovations to the unit. One entry occurred before the month of November. Further; the tenant was not in the unit on some occasions when entry occurred. The tenant could not say on how many occasions she was actually in the unit when entry was made by the landlord.

Therefore, I can find no basis for the claim that the tenant suffered a loss of quiet enjoyment of her rental unit and that the claim for loss of quiet enjoyment is dismissed.

I find on the balance of probabilities that the $25.00 paid in May 2016 was just as likely a fee for movies rented by the tenants' son. The tenants' son was present in that month and the tenant was not sure if in fact he had rented the movies. Therefore, I find that the claim for utility payment is dismissed.

Based on these determinations I grant the tenant a monetary order in the sum of $250.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to compensation in the sum of $250.00. The balance of the claim is dismissed.

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: January 04, 2017

Residential Tenancy Branch