



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LAT, LRE, MNDCT, OLC, PSF, RP

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "Act"), seeking the following:

- To dispute a rent increase;
- Authorization to change the locks to the rental unit;
- An Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- Compensation from the Landlord for loss or other money owed;
- An Order for the Landlord to comply with the *Act*, regulations or tenancy agreement;
- An Order for the Landlord to provide services or facilities required by law or the tenancy agreement; and
- An Order for the Landlord to complete repairs to the rental unit which have been requested in writing but not completed.

The hearing was convened by telephone conference call and was attended by the Tenant and the Tenant's advocate (the "Advocate"). The Landlord did not attend. The Tenant and Advocate were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Application and Notice of Hearing were personally served on the Landlord on November 6, 2017. As there is no evidence before me to the contrary, I find that the Landlord was personally served with the Application and the Notice of hearing on November 6, 2017.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, a copy of the decision and any Orders issued in her favor will be mailed to the dispute address and sent by e-mail to the e-mail address provided on the Application.

Preliminary Matters

The Tenant filed an Application seeking multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an

Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the priority claims made by the Tenant relate to rent, heat, and necessary repairs for health and safety reasons, and as a result, I exercise my discretion to dismiss the Tenants monetary claims for aggravated damages and loss of quiet enjoyment with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to an Order dismissing the rent increase sought by the Landlord?

Is the Tenant entitled to authorization to change the locks to the rental unit or an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to an Order for the Landlord to comply with the *Act*, regulations or tenancy agreement?

Is the Tenant entitled to an Order for the Landlord to provide services or facilities required by law or the tenancy agreement?

Is the Tenant entitled to an Order for the Landlord to complete repairs to the rental unit?

Is the Tenant entitled to recover the filing fee and any amount of the security deposit collected in contravention of the *Act* or regulations?

Background and Evidence

The Tenant testified that she rents a basement suite from the Landlord, who resides in the main level of the home, and that although her exterior entrance opens onto a shared hallway, there is an interior door to her separate suite. The Tenant testified that she entered a one year fixed-term tenancy with the Landlord on September 1, 2016, at a monthly rent amount of \$550.00. The Tenant testified that this rent amount includes heat, hot water and electricity, and that she pays an additional \$30.00 for cable. The Tenant testified that she has never been served with a lawful rent increase and that she paid a security deposit in the amount of \$300.00, which the Landlord still holds. In support of her testimony the Tenant provided rent receipts and a receipt for the \$300.00 security deposit paid.

The Tenant stated that the Landlord attempted to illegally increase her rent by giving her a handwritten note stating that rent is now \$600.00. In support of her testimony, the Tenant provided a copy of the note in the documentary evidence before me. The Tenant requested an Order stating that her rent is currently \$550.00 and requiring the Landlord to comply with the *Act* in relation to the service and amount of any rent increase.

The Tenant testified that as rent is \$550.00 per month, the Landlord overcharged her for the security deposit by \$25.00 and the Tenant therefore sought recovery of this amount.

The Tenant testified that there is a serious safety concern regarding the exterior door which serves as her only entrance and exit from the house. The Tenant stated that the exterior door locks from both sides and that a key is always required to open the door from the inside. The Tenant stated that this poses an

immediate and serious risk to her health and safety as the windows in her unit do not open and she may not be able to open the door in an emergency. The Tenant testified that she has requested that the Landlord replace the locking mechanism with one that only requires a key to be opened from the outside, but the Landlord has not completed this repair. In support of her testimony the Tenant submitted a handwritten document from the Landlord stating that the locksmith has advised her that there is nothing wrong with the lock and that the door is very old. As a result, the Tenant sought an Order for the Landlord to replace the door or locking mechanism.

The Tenant stated that she has also made numerous requests for the Landlord to repair the exterior light by her entrance, as the lack of a light poses a safety concern, and for the Landlord to keep the common areas of the property clean. The Tenant stated that the Landlord has not fixed the exterior light and that the shared areas of the basement (namely the hallway and laundry area) have not been dusted or vacuumed since the start of her tenancy. As a result, she requested an Order for the Landlord to repair the light and clean the shared spaces.

The Tenant stated that the Landlord has attempted to illegally end her tenancy on several occasions by issuing hand written letters to her that do not comply with the *Act* and requested an Order for the Landlord to comply with the *Act* if she wishes to end the tenancy. In support of her testimony the Tenant provided copies of two handwritten notices from the Landlord advising the Tenant to move out and copies of letters from the Advocate to the Landlord regarding these illegal notices to end tenancy.

The Tenant testified that she has also had significant issues with the heat in the rental unit since the start of the tenancy. The Tenant stated that as her suite is in the basement, it remains cool, even in the summer, and that although heat is included in her rent, the Landlord often turns the heat on only for a short period during the day and turns it off entirely in the evening and all night. The Tenant stated that the Landlord provided her with an old, ill operating space heater in the summer, but it does not put out enough heat to keep her unit at a habitable temperate, especially in the winter when the outside temperature is below freezing. The Tenant stated that the unit is so cold she suffers from repeated nose bleeds, headaches, and stiff joints, has difficulty sleeping, and must be wrapped in blankets while in the unit in the winter.

The Tenant stated that when she complained to the Landlord about the lack of heat, she was advised to buy another space heater herself, which the Tenant testified she cannot afford due to her limited income. In any event, the Tenant argued that it is not her responsibility to buy a space heater, as adequate heat is to be included in her rent. As a result, the Tenant requested an Order that the Landlord supply her with adequate heat or a suitable alternate heat source at no extra cost. In support of her testimony the Tenant provided copies of several letters she states were sent to the Landlord regarding the heating issue.

The Tenant also testified that the Landlord has entered her unit for reasons other than an emergency without permission or proper notice. The Tenant stated that in January of 2017 the Landlord entered her unit to ask for the wifi password while she was asleep and unclothed. The Tenant stated that the Landlord witnessed her naked and had to be physically removed from the unit which, was an extremely traumatizing event for her. As a result, the Tenant stated that she now suffers from nightmares that the Landlord is entering her unit at night. Further to this the Tenant stated that she suspects that the Landlord has entered her unit without proper notice or permission on other occasions as she has returned home to find her belongings out of place and has been advised by the Landlord several times that her unit is not tidy.

As a result, the Tenant requested an order restricting or setting conditions on the Landlord's right to enter the rental unit and authorization to change the locks.

Lastly the Tenant testified that she was required to install her own smoke detectors and that the fire extinguisher in the unit expired in 1984. The Tenant therefore requested an Order for the Landlord to provide her with a new fire extinguisher for safety reasons.

Analysis

Heat

I accept the Tenant's undisputed and affirmed testimony that heat is included in the cost of rent, that the Landlord is restricting her access to heat for large portions of each day, and that the small space heater she has been provided with is inadequate due to its age, state of repair, and very minimal heat output. Section 32 of the *Act* states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Given that heat is included in the rent, I find it reasonable to conclude that the Landlord is therefore required to provide reasonable and adequate heat to the Tenant. As a result, I Order that the Landlord provide the Tenant with an alternate means of heating her rental suite within two weeks of the date of this decision. The alternate heat source, such as a space heater or space heaters, must be suitable to heat a space comparable in size to the square footage of the Tenant's rental unit.

Repairs

I accept the Tenant's undisputed testimony that the locking mechanism for the exterior door presents an unacceptable safety risk to the Tenant in the event of an emergency. As stated above, section 32 of the *Act* states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and I find that restricting the Tenant's only means of exit from the building to a door that requires a key to open from inside the home is a serious and significant safety risk. As a result, I Order that the Landlord replace the lock on the exterior door through which the Tenant enters and exits the building within three weeks of the date of this decision. The current lock must be replaced with a lock that can be opened from the inside without a key.

I also accept the Tenants undisputed testimony that the exterior light requires repair and agree that a lack of light at the Tenant's entrance and exit point presents a safety risk. As a result, and pursuant to Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #1, I Order that the Landlord repair or replace the light fixture within three weeks of this decision and that the Landlord repair and maintain this light and replace, as required, all lightbulbs in this light fixture and other common areas of the property throughout the course of the tenancy.

Although the Tenant requested that the Landlord provide her with a new fire extinguisher, the Tenant did not submit any documentary evidence that the Landlord is required by law to provide a fire extinguisher for the rental unit. The Tenant also did not provide any documentary or other evidence in support of her testimony that the common areas of the property have not been maintained by the Landlord in a state of repair that complies with health standards. Given the fact that the health standards required by law may not be the same as the health standards expected or considered acceptable by either the Tenant or the Landlord, I find that the Tenant has failed to establish that the Landlord has breached the *Act* by failing to

maintain the common areas of the property according to legal health standards. As a result of the above, the Tenant's claims for an Order requiring the Landlord to provide her with a new fire extinguisher and to clean the common areas of the property are dismissed without leave to reapply.

Landlords Right to Enter the Rental Unit

I accept the Tenant's undisputed testimony that the Landlord entered her rental unit without notice or permission for a purpose other than an emergency on one occasion. However, as the Tenant's evidence regarding other unauthorized entries was speculative in nature, I find that the Tenant has not satisfied me that the Landlord has done so on any other occasions. Although Policy Guideline #7 states that where a tenant can prove that the landlord has entered contrary to the *Act*, the tenant may apply to have the locks to the rental unit changed, I find that authorizing the Tenant to change the locks is a serious matter as it significantly restricts the Landlord's ability to enter the rental unit in the event of an emergency, which may place the Tenant, the Landlord, the property, or other occupants at significant risk. As the Tenant has only satisfied me that the Landlord entered the rental unit contrary to the *Act* on one occasion, I dismiss the Tenant's claim for authorization to change the locks and instead Order that the Landlord comply with section 29 of *Act* with regards to entry of the rental unit. However, the Landlord should be aware that failure to comply with this Order may give the Tenant right to seek damages for unlawful entry or authorization to change the locks at a future date.

Notice to End Tenancy

Based on the documentary evidence and testimony before me, I am satisfied that the Landlord has, on at least two occasions, attempted to end the tenancy by serving the tenant with handwritten notices to end tenancy that do not comply with the *Act*. As a result, I Order that the Landlord comply with Part 4 of the *Act* regarding how a tenancy ends and I Order that the tenancy continue in full force and effect until it is ended by either party in accordance with the *Act*.

Rent Increase

Sections 41, 42, and 43 of the *Act* outline how and when a landlord may increase a tenant's rent. Based on the documentary evidence and testimony before me, I am satisfied that the letter from the Landlord regarding the increase in rent does not comply with section 42(3) of the *Act* as it is not in the approved form. As a result, I find that the Tenant's rent was not increased a result of this letter and I Order that the Tenant's rent remain at \$550.00 per month, plus the \$30.00 for cable, unless the Landlord serves a Notice of Rent Increase in the approved form and in compliance with the *Act* and regulations.

Security Deposit

Based on the testimony and documentary evidence before me, I am satisfied that the Tenant's rent was \$550.00 a month at the start of the tenancy and that a security deposit in the amount of \$300.00 was collected by the Landlord. Section 19(1) of the *Act* states that a landlord must not accept a security deposit that is greater than the equivalent of half a month's rent payable under the Tenancy agreement; which in this case, would have been \$275.00. As a result, the Tenant is entitled, pursuant to section 19(2) of the *Act*, to deduct the \$25.00 overpayment from the next month's rent or otherwise recover this amount from the Landlord.

As the Tenant was successful on the majority of her claims, I find that she is entitled to recover the \$100.00 filing fee, which she may deduct from the next month's rent or otherwise recover from the Landlord.

Conclusion

The Tenant's Application seeking a Monetary Order for aggravated damages and loss of quiet enjoyment is dismissed with leave to reapply. The Tenant's Application for replacement of a fire extinguisher and an Order for the Landlord to clean common areas of the property are dismissed without leave to reapply.

Pursuant to sections 67 and 72 of the *Act*, the Tenant is entitled to \$125.00 in compensation from the Landlord, which she may deduct from the next month's rent or otherwise recover from the Landlord.

I Order that the Landlord comply with the *Act* with regards to entry of the rental unit, and the issuance of any rent increase or notice to end tenancy.

I Order that the Landlord to complete the following actions:

- Within **two weeks** of the date of this decision, the Landlord must provide the Tenant with an alternate means of heating her rental suite at no extra charge, such as a space heater or space heaters, which must be suitable to heat a space comparable in size to the square footage of the Tenant's rental unit;
- Within **three weeks** of the date of this decision, the Landlord must replace the lock on the exterior door through which the Tenant enters and exits the building with a lock that can be opened from the inside without a key; and
- Within **three weeks** of this decision, the Landlord must repair or replace the exterior light fixture at the Tenant's entrance to the common areas of the property.

The Landlord should be aware that failure to comply with the above noted Orders could lead to a recommendation for an administrative penalty under the *Act*. The maximum amount for an administrative penalty under section 87.4 of the *Act* is \$5,000.00 per day that the Landlord remains non-compliant. Further to this, any non-compliance with the above noted Orders may also give the Tenant cause to apply to the Branch for damages, loss of quiet enjoyment, and for a reduction in rent.

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: February 16, 2018

Residential Tenancy Branch