



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKIMA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC RP FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

RB ("landlord") appeared as agent and testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 1 Month Notice dated November 24, 2017, on December 1, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in 2003. Monthly rent was set at \$886.75. On October 1, 2017 the landlord gave notice to the tenant that the rent would be increased to \$922.34 as of January 1, 2018. Then tenant disputes this rent increase as the effective date is less than 3 months of the date the notice was served to him. The tenant also disputed the date that he was served the notice, but could not recall the exact date that he had received the Notice. The tenant has been paying the increased rent since January 1, 2018, and is requesting a return of the increased rent to him. The landlord's agent could not confirm in the hearing that the January and February 2018 rent payments were for "use and occupancy" only. The tenant provided a copy of the January 2018 rent receipt, and there is no indication that the landlord made that indication to the tenant.

The tenant is also requesting that the landlord provide him with his own personal mailbox, which both parties confirmed no longer exists. The previous mailbox was located outside the building, but was removed for security reasons. The tenant is forced to receive his mail through the receptionist at the business downstairs. Both parties agreed during the hearing that the landlord would provide the tenant with his own personal mailbox, which would be installed inside the building. If it is not possible for the mailbox to be installed indoors, the tenant consented to the mailbox being installed outside knowing the risks involved.

The tenant is applying to cancel the 1 Month Notice served to him on December 1, 2017. The landlord cited the following reason for the issuance of the Notice:

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord's agent testified that the landlord believes the tenant is residing at a different address, which is also owned by the same landlord. The landlord believes that the tenant is subletting the rental address on the 1 Month Notice, but the landlord's agent testified in the hearing that he could not testify as to how the landlord has confirmed that the tenant is subletting the rental unit. The tenant disputes the landlord's claim that he is subletting, and testified that although he is renting two different suites, he is living at the rental address on the 1 Month Notice.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on December 4, 2017, after being served with the notice on December 1, 2017. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving she has cause to end the tenancy.

The landlord's agent testified in the hearing that he was unable to testify as to how the landlord is certain the tenant is subletting the rental suite. As the tenant disputes this, and as the landlord failed to provide sufficient evidence to support that the tenant is subletting the rental suite, I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice dated November 24, 2017 is cancelled, and the tenancy is to continue until ended in accordance with the *Act*.

As the landlord agreed to provide and install a mailbox for the tenant, I order that the landlord install a personal mailbox for the tenant as soon as practicable. I order that this mailbox be installed in a safe and secure area where the tenant may have free and private access to his mail. The tenant consented to the mailbox being installed outside

if the mailbox cannot be installed inside, with the knowledge that this may not be the most secure area for his mail to be delivered.

Section 42 of the Act states the following about how a Notice of Rent Increase is to be given:

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.

I find that the Notice of Rent Increase was not given to the tenant at least 3 months before the effective date of the increase, which would be February 1, 2018 and not January 1, 2018. As the tenant could not recall the exact date of service, I find that the tenant was served the Notice of Rent Increase on the date of the Notice, which is October 1, 2017. I also note that the year of the Notice of Rent increase is incorrectly noted as 2017, instead of 2018. Section 42(4) of the Act allows the effective date to be adjusted if the notice does not comply with subsection (2), which requires the landlord to give 3 months notice. Accordingly, I find that the notice takes effect on February 1, 2018, and I order the landlord to return to the tenant \$35.59 for the rent increase he paid in January of 2018.

As the tenant was successful in his application, I allow the tenant to recover the filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated November 24, 2017, and the tenancy is to continue until ended in accordance with the *Act*.

I order that the landlord install a personal mailbox for the tenant.

I find that the tenant is entitled to a monetary order of \$35.59 for the rent increase he paid for January 2018. The Notice of Rent Increase is to take effect as of February 1, 2018.

I find that the tenant is entitled to recover the filing fee for this application.

I allow the tenant to implement a monetary award of \$135.59, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$135.59, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 22, 2018

Residential Tenancy Branch