Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing was scheduled to deal with the tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement; and, for monetary compensation for damages or loss under the Act, regulations or tenancy agreement, as amended. The tenant appeared at the hearing and two agents appeared on behalf of the landlord. In this decision, the landlord's agents have been differentiated, where appropriate, by their initials. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the allotted hearing time I heard the tenant's requests for orders for compliance and the landlord's responses; however, the time expired before the tenant's monetary claims were heard. Some of the tenant's monetary claims became moot in dealing with the orders for compliance, such as the request for recovery of overpaid rent; however, other components of his monetary claim were not. The tenant's monetary claims were severed and he is at liberty to bring forward another claim for any items not addressed in this decision. I would; however, suggest the parties attempt to resolve such issues between themselves before another Application for Dispute Resolution is made.

Issue(s) to be Decided

Has the tenant established that it is necessary and appropriate to issue orders for compliance to the landlord?

Background and Evidence

The tenancy started on April 15, 2016 for a fixed term that expired on April 30, 2017. The tenancy has continued on a month to month basis since then. The rent was originally set at $1,750.00 payable on the first day of every month and it increased to $1,810.00 per month in 2017.

Notice of Rent Increase

The tenant raises an issue with respect to service of a second Notice of Rent Increase dated January 29, 2018 that would increase the rent to $1,880.00 effective May 1, 2018. It was undisputed that the landlord's agent sent the tenant an email containing a photograph of an envelope that presumably contained a Notice of Rent Increase on January 29, 2018. The Notice was then mailed to the tenant and

the envelope has a post-mark date of January 30, 2018. The tenant received the Notice in the mail on February 5, 2018.

The tenant was of the position the effective date of the rent increase is non-compliant since it was received in February 2018 and should have read June 1, 2018. The landlord's agent ET was in agreement that given the date the Notice was mailed and received by the tenant the effective date for the rent increase should have read June 1, 2018.

The tenant questioned whether the entire Notice should be deemed invalid. I informed the parties that the Act provides that if the effective date of a Notice of Rent Increase is non-compliant the Notice will still take effect on the earliest compliant date. As such, I informed the tenant that the Notice would stand but that the effective date automatically changes to read June 1, 2018. That being said, both parties were in agreement that the tenant has paid the increase for May 2018 and he is entitled to recover the overpayment of $70.00 by deducting it from a subsequent month's rent.

I heard that that tenant has supplied the landlord with post-dated rent cheques. The parties were in agreement that the tenant will issue a rent cheque for a subsequent month's rent that reflects a deduction of $70.00. The replacement rent cheque will be accepted as payment in full and the landlord will return the tenant's former cheque to him.

Geothermal heat pump/air conditioner

The rental unit is equipped with a geothermal heat pump and air conditioning unit. It has a filter that requires replacement from time to time. The tenant seeks an order requiring the landlord to replace the filter every six months. The tenant stated that the system has stopped working on two occasions and that it resumed function after the filter was changed by the technician. According to the tenant the technicians have told him that the filter should be changed every six months for the unit to work properly and avoid break-down.

The landlord was of the position that changing the filter once per year is all that is required. The landlord submitted that the filter was checked in April 2018 and it was found to be clean. The landlord attributed the second break-down to the fuse that needed resetting, not the changing of the filter. The landlord stated that the technicians have not instructed the landlord that filters need changing every six months. The landlord referred me to an invoice of the technician; however, when I looked at the landlord's evidence it would appear the landlord mistakenly uploaded two copies of the tenancy agreement instead of the technicians invoice.

The landlord pointed to Residential Tenancy Policy Guideline 1 where it states:

> **FURNACES**
> 1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
>
> [Emphasis added]

Both parties provided consistent testimony that the manufacturer's manual indicates that a regular a maintenance schedule should be followed but there is no specific time frame indicated for changing the filter.

The parties provided consistent testimony that obtaining replacement filters is not an issue and that either the tenant or the landlord may obtain them from the building manager; however, at issue is who installs or pays to install the new filter. The tenant pointed out that it is not his responsibility to do so and he is not willing to crawl up into the hatch or otherwise work on the unit. The landlord was of the position that the more frequent filter changes may be attributable to the tenant having a second fridge in the unit which creates heat.

After more discussion on the matter, the tenant was willing to accept the landlord will change the filter once per year; however, the tenant sought an order that if the heat pump/air conditioner breaks-down that it will be repaired in a more timely manner than it has in the past, say within one week, and that competent individuals or technicians should be sent to address the failure.

The landlord was agreeable that for the most part that making a repair within one week is feasible but made note that the manufacturer's technicians may take 2 – 3 days to respond to a call.

The landlord was also of the position that the tenant has to move his fridge since it is in the way of accessing the hatch to the heat pump. The tenant acknowledged that he has a fridge that is partially under the access hatch but was of the position that the manufacturer's technicians have been to service the unit four times without any difficulty because they bring the appropriate ladder. The landlord submitted that when the landlord's agent SL went to gain access to the hatch the tenant's fridge was in the way and he could not get into the access hatch. The tenant pointed out that SL brought a two-step ladder which was the reason the landlord's agent could not access the hatch. The tenant conceded that if the fridge needs to be moved to accommodate the technician he will move the fridge.

Building key/fob for the landlord

The tenant submitted that the landlord does not have a key/fob to the main entry door of the building and that every time access to the rental unit was required for the landlord or contractor the tenant had to be home to allow entry. The tenant seeks for the landlord to get its own key/fob for the main entry door so that the landlord or contractors may gain access when necessary without him being home and losing income.

The landlord was of the position that having the tenant home to permit entry was for the tenant's benefit; however, the landlord also stated that a key/fob for the main building entry door has been ordered by the landlord. The landlord expected that a key/fob will be received within days.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Notice of Rent Increase

Section 42 provides for the timing of rent increases. It provides, with my emphasis added:

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 payable for the rental unit;

(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.

Where a party mails a document to the other party, section 90 of the Act deems the person to have received the document five days after mailing in the absence of any evidence to the contrary. Mailing a Notice of Rent Increase on January 30, 2018 is insufficient to expect the tenant will receive the Notice the next. The tenant stated he received the Notice on February 5, 2018 and I find that date is more realistic in comparison to the deeming provision of section 90. Accordingly, I accept that the tenant received the Notice of Rent Increase on February 5, 2018 and the Notice of Rent Increase should have had an effective date of June 1, 2018.

As provided under section 42(4), the non-compliant effective date of May 1, 2018 automatically changes to the earliest date that does comply, which is June 1, 2018 in this case. Since the Act provides a remedy for a non-compliant effective date, I find the Notice of Rent Increase is not invalidated, but is automatically changed to comply.

Since the tenant paid the $70.00 incrase for May 2018, I find the tenant is entitled to recover the overpaid rent by deducting it from rent otherwise payable as provided in section 43(5) of the Act. Section 43(5) states:

> (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase

In light of the above, I authorize the tenant to deduct $70.00 from a subsequent month’s rent payment and in doing so the landlord must consider that month’s rent to be paid in full. This may be accomplished by providing the landlord with a replacement cheque and upon receipt of the replacement cheque the landlord shall return the tenant’s original cheque.

Geothermal heat pump/air conditioner

The parties were in dispute as to the appropriate time to change the filter on the geothermal heat pump/air conditioner. Both parties relied upon hear-say evidence of technicians and neither party called a qualified technician to the hearing to provide an opinion. Nor, was I provided documentary evidence that would set out a specific time frame for changing the filter. As such, I am of the view that the proposed resolution made during the hearing is fair and reasonable in the circumstances.

In light of the above, I order the landlord to change the filter to the heat pump/air conditioner no less than once per year. The landlord is responsible for acquiring the filter and having it installed.

In addition to the above, should the heat pump/air conditioner fail at any time the landlord must have the unit repaired within a reasonable amount of time after receiving notification from the tenant. I am of the view that in most circumstances having a repair completed within one week of receiving notification is a reasonable expectation and the landlord is expected to accomplish this unless extraordinary circumstances prevent this.

I also caution the tenant that should the access hatch prove to be difficult due to the placement of his furniture or appliances he is responsible for moving these items out of the way within a timely manner.

Building key/fob for the landlord

A landlord is expected to be able to access the rental unit for various lawful purposes, including facilitating repairs. Where a rental unit is located in multiple-unit building with a secured main entry door, it is expected that the landlord would have the means to access the main entry door as well as the door to the rental unit.

The landlord did not have a means of accessing the main entry door of the building and I find it is unreasonable for the landlord to expect the tenant to be at home to provide entry to the landlord and/or contractors. Therefore, I order the landlord to obtain a key/fob for the main entry door in order to permit lawful entry into the rental unit as necessary and appropriate. I give the landlord has one week to fulfill this order.

I refer the parties to section 29 of the Act which provides for the circumstances when a landlord may lawfully gain entry into the rental unit. In brief, the landlord must obtain the tenant's consent or give the tenant a 24 hour notice of entry in most circumstances. Below, I have reproduced section 29 for the parties' further reference:

> **Landlord's right to enter rental unit restricted**
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> **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:
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> (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).

[Emphasis added]

Filing fee

The tenant requested recovery of the $100.00 filing fee from the landlord. I find the tenant's application had some merit and I award the tenant recovery of $50.00 of the filing fee he paid for this application.

I authorize the tenant to deduct $50.00 from a subsequent month's rent in satisfaction of this award and when the tenant deducts $50.00 in satisfaction of this award the landlord must consider the rent to be paid in full.

Conclusion

The Notice of Rent Increase dated January 29, 2018 takes effect on June 1, 2018 and the tenant has overpaid rent for the month of May 2018 in the amount of $70.00. The tenant is authorized to deduct $70.00 from a subsequent month's rent in order to recover this overpayment of rent.

I have issued orders with respect to repairing and maintaining the geothermal heat pump/air conditioning unit.

I have ordered the landlord to obtain a key/fob for the main entry door for the building.

I have awarded the tenant recovery of one half of the filing fee, or $50.00, paid for this application. The tenant is authorized to deduct $50.00 from a subsequent month's rent in order to satisfy this award.

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: June 26, 2018

Residential Tenancy Branch