



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, DRI, OLC, FF

Introduction

This hearing dealt with the tenant's application for orders for emergency repairs; to dispute a rent increase; and, orders for the landlord to comply with the Act, regulations or tenancy agreement filed on April 30, 2018. Both parties appeared or were represented at the hearing and 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.

At the outset of the hearing I explored service of hearing documents and evidence upon each other and the Residential Tenancy Branch. I confirmed that the landlord was served with the Notice of Hearing and the tenant's Application for Dispute Resolution by registered mail sent within three days of filing on April 30, 2018. I determined that the tenant's documentary evidence that was uploaded to the Residential Tenancy Branch service portal had not been served upon the landlord. Accordingly, I did not admit the tenant's documentary evidence. I also noted that the landlord had not submitted any documentary evidence for this proceeding. As such, I informed the parties that the hearing would proceed with oral testimony only.

On another procedural matter, the tenant stated that she had recently filed another Application for Dispute Resolution to dispute a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), among other issues. The tenant requested that I join the files or amend the Application for Dispute Resolution before me to deal with the 2 Month Notice. The tenant provided the file number for the Application for Dispute Resolution she filed on June 4, 2018 and I have provided the file number on the cover page of this decision. The landlord stated that he was unaware the tenant was disputing the 2 Month Notice since he had not been served with anything to indicate that. The tenant confirmed that she had yet to serve the landlord with the Application for Dispute Resolution she filed on June 4, 2018. I found that to proceed to

deal with the 2 Month Notice when the landlord was not prepared to deal with that issue at this hearing would be grossly unfair to the landlord and I declined to amend this application or join the two applications together. Since the tenant had already filed to dispute the 2 Month Notice the tenant was informed that it is upon her to serve the landlord with that Application for Dispute Resolution. The tenant indicated that she understood and would be serving the landlord with the June 4, 2018 Application for Dispute Resolution after the teleconference call ended.

The tenant indicated that another repair issue concerning the toilet arose after filing her Application for Dispute Resolution on April 30, 2018. The only repair issue raised on the Application for Dispute Resolution before me pertained to a water leak in the ceiling and since the landlord has only been served with the Application for Dispute Resolution of April 30, 2018 I limited the repair issues to that identified on the April 30, 2018 application. The tenant indicated that she has raised the toilet repair issue on the Application for Dispute Resolution filed on June 4, 2018.

Issue(s) to be Decided

1. Is it necessary to issue a repair order to the landlord with respect to the leak in the ceiling?
2. Has the landlord imposed an unlawful rent increase upon the tenant?
3. Is it necessary to issue orders for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

I heard that the parties have executed two written tenancy agreements. The first tenancy agreement started on July 1, 2013 and was for a fixed term of one year and then it continued on a month to month basis. The parties executed a second tenancy agreement in November 2017 requiring the tenant to pay rent of \$907.00 on the first day of every month for a fixed term of six months expiring on May 31, 2018 (herein referred to as the tenancy agreement or the second tenancy agreement). The second tenancy agreement indicates that the tenant would have to vacate the rental unit at the end of the fixed term. As of the date of this hearing the tenant continues to reside in the rental unit.

The tenant testified that the landlord started demanding that she pay more rent or move out of the rental unit at the end of the fixed term. The tenant testified that initially the landlord demanded another \$600.00 per month in rent; however, he reduced his

demand to rent of \$1,000.00 per month and wants the tenant to sign a new tenancy agreement and increase the security deposit. The tenant is not agreeable to entering into a new tenancy agreement for the increased rent since it about the annual allowable rent increase of 4% or increasing the security deposit. The tenant submitted that the landlord is requiring her to vacate the rental unit despite the change in the legislation that occurred in December 2017. The tenant stated that the landlord's demands were made orally and via text message. The tenant stated that some of the oral conversations were recorded.

The landlord repeatedly pointed me to the tenancy agreement that the tenant signed in November 2017 with the requirement for her to vacate on May 31, 2018. The landlord testified that the vacate clause was entered into in November 2017 because the landlord had the intention to move his son into the rental unit upon the expiry of the fixed term. The landlord acknowledged that the tenancy agreement does not indicate a reason for the vacate clause. Nevertheless, the landlord appeared to take the position that since the tenancy agreement was executed in November 2017 the legislative changes that took effect in December 2017 did not change the requirement for the tenant to vacate the rental unit at the end of the fixed term. The landlord denied that he demanded the tenant pay more rent or sign a new tenancy agreement.

Despite the landlord's position above, both parties provided consistent testimony that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant has filed to dispute the 2 Month Notice on June 4, 2018 and the tenant testified that she will be serving the landlord with the hearing documents for the hearing set for July 23, 2018.

The tenant testified that when she executed the tenancy agreement in November 2017 she was not made aware of the vacate clause and she understood from the landlord that the new tenancy agreement was to formalize the rent increase to \$907.00 per month.

As for emergency repairs, the tenant indicated that there was water leaking from the ceiling in her bedroom which went through the light fixture causing it to flicker and she even received a jolt when using the light switch at times. As a result, she began using a lamp instead of the light fixture. I heard that the water pipe that services an outdoor tap was leaking so the upstairs tenant had turned the valve off to this water line which stopped the water leak but left the light fixture unsafe and damaged. The tenant testified that she had notified the landlord of this issue a number of times via text message and oral conversations. The tenant testified that the landlord did not seem too

concerned about the issue since the water was shut off and he did not address the flickering light fixture until very recently. The tenant confirmed that the landlord had recently repaired this issue by having the water line repaired and replacing the light fixture.

The landlord stated that the upstairs tenant turned the water line off to stop the water leak and when the landlord inspected the light fixture he found it was working fine. The landlord stated that he was unaware of the issue with the light fixture until the tenant notified him of that at the end of May 2018 so the landlord addressed the issue soon thereafter. The landlord is of the position that he responds to repair issues that he is aware of in a timely manner.

Analysis

Upon consideration of the oral testimony of both parties, I provide the following findings and reasons.

Prior to legislative changes that took effect on December 11, 2017 parties could agree, by way of their tenancy agreement, that the tenant would vacate the rental unit at the end of a fixed term (commonly referred to as a “vacate clause”) and a landlord could seek an Order of Possession to enforce such a term under section 55 of the Act. On December 11, 2017 changes to the Act was made that significantly restricts the use of a vacate clause. Tenancy agreements entered into on or after December 11, 2017 require the reason for the vacate clause to be stipulated in the tenancy agreement and the permissible reasons are limited to those provided in section 13.1 of the Residential Tenancy Regulations.

When the legislative changes were made on December 11, 2017, the changes included a transitional provision by way of section 104.3 that applies to tenancy agreements already entered into with a vacate clause. The transitional provision apply the change to fixed term tenancy vacate clauses retrospectively. If a fixed term tenancy agreement was in effect when the legislative changes were made and the tenancy agreement contained a clause that requires a tenant to vacate the rental unit on a specified date, that clause is no longer enforceable in most circumstances. One of the circumstances that permits the vacate clause to remain enforceable is if the landlord had a good faith intention to occupy the rental unit himself or by his close family member. In such cases, the landlord could still apply for an Order of Possession under section 55 of the Act as it read immediately before the legislative changes made on December 11, 2017 and demonstrate the landlord’s good faith intention to use the rental unit.

Section 104.3 of the Act, section 13.1 of the Regulations and Residential Tenancy Branch Policy Guideline 30: *Fixed Term Tenancies* are available on the Residential Tenancy Branch website for the parties' further reference.

In this case, the parties executed a tenancy agreement on November 23, 2017 that is for a fixed length of time and has a vacate clause. There is no reason for the vacate clause stipulated on the tenancy agreement although that is not surprising since at that time there was no requirement to indicate the reason in the tenancy agreement. The parties provided conflicting testimony as to whether the tenant was made aware of the reason for the vacate clause when the tenancy agreement was executed on November 23, 2017. If the landlord had a good faith intention to end the tenancy so that he or his close family member could occupy the rental unit when the tenancy agreement was executed on November 23, 2017 the landlord would have been able to apply for an Order of Possession under section 55 and demonstrate his good faith intention to end the tenancy. However, the landlord has not made such an application. Rather, the landlord has issued a 2 Month Notice to the tenant on May 31, 2018, indicating the landlord or the landlord's close family member intends in good faith to occupy the rental unit, which the tenant has filed to dispute. As such, I find the landlord's good faith intention to end the tenancy will be subject to analysis by way of the July 23, 2018 proceeding.

As for the tenant's assertion that the landlord has demanded she pay more rent and sign a new tenancy agreement, parties are at liberty to renegotiate their tenancy agreement and sign a new agreement if there is a mutual agreement reached by the parties. An increase in rent that exceeds the annual allowable amount may be accomplished by way of a tenant's written consent and the landlord serving the proper Notice of Rent Increase with the required three months of advance notice. Alternatively, the parties may accomplish an additional rent increase by way of a new tenancy agreement that replaces the former agreement. Certainly, one party is at liberty to refuse to enter into a new agreement with the proposed changes. I find there is nothing illegal with respect to seeking agreement to change the terms of tenancy and enter into a new agreement. Of concern is where one party seeks a new tenancy agreement and retaliates if the other party does not agree to enter into a new tenancy agreement. Although the tenant indicated on her Application for Dispute Resolution that the landlord was harassing her to enter into a new tenancy agreement I find there was insufficient evidence presented to me in order for me to conclude the landlord is harassing the tenant and whether the 2 Month Notice was issued in retaliation will be the subject of the July 23, 2018 hearing.

Since the rent has remained at \$907.00 per month as reflected in the tenancy agreement I find there is no unlawful rent increase that has been imposed upon the tenant. I make no orders for compliance to the landlord as I am unsatisfied there has been a breach of the Act, regulations or tenancy agreement at this time.

With respect to the tenant's request for an emergency repair for a water leak and damaged light fixture, this issue has been resolved by way of a repair. Accordingly, I find it unnecessary to issue a repair order to the landlord for this matter.

Conclusion

The repair issue identified on this Application for Dispute Resolution has since been resolved and I make no repair order with this decision.

I have found that the rent paid by the tenant has been that agreed upon by way of the tenancy agreement executed in November 2017 and there is no unlawful rent increase imposed upon the tenant.

I make no orders for the landlord to comply with the Act, regulations or tenancy agreement. An attempt to renegotiate the terms of tenancy is not a breach of the Act.

The landlord's good faith intention to occupy the rental unit shall be the subject of a hearing scheduled to take place on July 23, 2018 in response to the tenant's Application for Dispute Resolution to dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property.

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 12, 2018

Residential Tenancy Branch