



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, OLC, LRE, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application for authorization to reduce rent payable for repairs, services or facilities agreed upon but not provided; orders for the landlord to comply with the Act, regulations or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; and, for compensation for damages or loss under the Act, regulations or tenancy agreement. 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. The tenant served each landlord with her Application for Dispute Resolution and the Amendment to an Application for Dispute Resolution by registered mail sent on May 9, 2018. The landlord confirmed receipt of these packages.

The tenant sent her evidence package to the landlords via registered mail sent on June 13, 2018. The landlord confirmed receipt of this package on June 14, 2018 but noted that the evidence was received after the serving deadline. Despite receiving the tenant's evidence late the landlord was agreeable to being deemed sufficiently served. I deemed the landlord sufficiently served with the tenant's evidence package and I admitted the tenant's evidence package.

The landlords provided a written response and evidence and mailed it to the tenant via registered mail on June 15, 2018. The tenant confirmed receipt of the landlord's package and I admitted it into evidence.

During the hearing, I addressed the issues surrounding the tenant's allegations of harassment, illegal entry, and renovations. I dismissed the tenant's monetary claim with leave to reapply. The landlord stated that the tenant's monetary claim was not clear. I was also of the view that the monetary claim was not sufficiently set out as the basis for the claim was not specified and there was not a detailed calculation provided. The tenant is at liberty to file another monetary claim if she so chooses. The tenant is cautioned however, that a claim must be clearly set out, including detailed calculations, and include full particulars of the basis for the claim. Both parties were encouraged to familiarize themselves with their respective rights and obligations under the Act.

Issue(s) to be Decided

1. Is it necessary and/or appropriate to issue orders to the landlord?
2. Is it necessary and appropriate to suspend or set conditions on the landlord's right to enter the rental unit?
3. Is the tenant authorized to reduce rent for repairs, services or facilities not provided?

Background and Evidence

Under an oral agreement the tenancy started on or about March 29, 2016 and the tenant paid a security deposit of \$375.00. The rent was set at \$750.00 per month and payable on the first day of every month. The landlords increased the rent without a Notice of Rent Increase and the tenant has been paying increased rent of \$780.00 since January 1, 2018.

Illegal Entry

The tenant alleged that the landlords have been entering the rental unit without her consent or written notice of entry. When asked the reason the tenant believes the landlords have been entering her unit, the tenant acknowledged that she has not caught the landlords in her unit; but, that when she has returned home she has found items broken in her unit and the landlords are the only ones who have keys to her unit. The tenant stated that she approached the landlords about her suspicions and the landlords denied entering her unit while she was out.

The landlord denied entering the rental unit without the tenant's prior consent or knowledge. I asked the landlord to provide an example of obtaining consent or giving notice of entry to the tenant. The landlord gave two examples: one where the tenant

complained of a repair issue and in response the landlord came to the rental unit door, knocked on the door and the tenant invited him in to deal with the complaint; the second example was when the landlord notified the tenant of an upcoming renovation by text message and asked the tenant if he could come in to do some preparatory work, which she allowed.

The tenant acknowledged that she had asked the landlords to send her text messages before entering and she had received text messages from the landlord. The tenant then complained that the landlord has sent her a text messages and then did not show up.

During the hearing, the tenant requested that the landlord to give her proper written 24 hour notice of entry instead of text messages or verbal consent. The landlord was agreeable to giving the tenant written 24 hour notice in accordance with the Act and indicated he will do so in the future.

Renovation

On or about April 26, 2018 the landlord commenced a renovation project in the rental unit involving the installation of French doors in place of a large window. The renovation was not complete when, on May 2, 2018, the tenant filed this Application for Dispute Resolution indicating she considered the installation of the French doors to be harassment. Upon receiving the tenant's application the landlord stopped work on the project, pending the outcome of this hearing.

The tenant was of the view the installation of the French door was unnecessary and she does not like that the doors open outwards. The tenant was of the view that having outward opening doors would permit anybody to enter her unit. This lead to exploration of the locking mechanism on the French doors. The tenant appeared confused as to how the French doors lock. Upon review of the photographs she provided and in talking with the landlord, it appears that the French doors are lockable from the inside of the rental unit by turning the latch on the inside of the door. The tenant eventually acknowledged that she is able to lock the French doors from the inside but that she wants to be able to block the entry with furniture or objects so that she can sleep at night.

The tenant also indicated she did not have a key or the code to the coded entry pad on the French doors. The landlord stated the code is four digits and it was set to be the last four digits of the tenant's telephone number. The landlord stated he would provide the tenant with a copy of the key that opens the French door lock.

The tenant wants the landlord to finish caulking the French door, provide a replacement for the baseboard heater that was removed to accommodate the French door, provide a screen on the French doors since the former window had a screen, and, installation of window coverings since the former window had window coverings provided by the landlords. The tenant also noted that the French door has gaps when it is closed.

The landlord was agreeable to finishing the caulking, installation of a screen and installation of window coverings. The landlord also stated that the main heat source in the building is from a heat pump and the tile floors are heated but acknowledged that there was a supplemental baseboard heater that was under the window that was removed. The landlord was agreeable to providing the tenant with another supplemental heat source although it will likely be different than the baseboard heater that was once there. The landlord indicated that it is reasonable to accomplish all of these tasks within one month of today's date.

Non-compliant rent increase

Before the hearing ended, I informed the parties that where a tenant has paid a rent increase that does not comply with the rent increase provisions of the Act, a tenant may recover the non-compliant rent increase paid by deducting it from a subsequent month's rent payment. Both parties understood that the tenant has paid \$30.00 per month for a non-compliant rent increase since January 1, 2018 and the tenant may deduct \$180.00 from a subsequent month's rent. The parties were also informed that the landlord remains at liberty to increase the rent by issuing a Notice of Rent Increase that complies with the Act at any time from this date forward.

It was apparent to me that the parties are not very familiar with the rights and obligations provided under the Act and I encouraged the parties to familiarize themselves by contacting an Information Officer with the Residential Tenancy Branch or visiting the Residential Tenancy Branch website.

Analysis

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

As for the tenant's allegations of illegal entry, I find the tenant's suspicions that the landlords have entered the unit while she is out and the landlord's denial of doing so is

insufficient for me to conclude the landlords have been entering the rental unit without the tenant's advance knowledge. However, in recognition that a tenant has the right to request a written notice of entry, and the landlord's agreement to provide such in the future, I order the landlords to do so during the remainder of this tenancy, in accordance with section 29(1)(b) of the Act.

Section 29 of the Act provides as follows:

Landlord's right to enter rental unit restricted

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:

(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).

[My emphasis in bold]

The landlord must take into account that unless the notice of entry is given in person, section 90 of the Act provides that documents are deemed to be received as follows:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

[My emphasis in bold]

As for the window replacement project, section 32(1) of the Act provides for repairs and maintenance of a property by a landlord. It provides:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

More typically, tenants file applications seeking orders for a landlord to make repairs or renovations. In this case, the landlord was making renovations and the tenant made this application indicating the landlord's renovations were unnecessary and constituted harassment, causing the landlord to stop the renovation before it was complete.

As I informed the tenant during the hearing, the landlords are at liberty to determine the appropriate repairs and renovations for a rental unit and residential property. A

renovation may be undertaken even if it is not necessary in the eyes of the tenant. Generally, repairs and renovations are viewed as beneficial but if the alteration takes away something from the tenant then it may be appropriate to issue orders to ensure the tenant has not lost something that she previously enjoyed or had use of.

In this case, I am of the view the landlords were within their rights as property owners and landlords to replace a large window with a French door, even if the tenant considered the window adequate or preferable. However I find the tenant is entitled to use and enjoyment of a screen, window coverings, and a supplementary heat source since she had those items when the window was in place. I accept the landlord's explanation that these tasks were not completed because the tenant filed this Application for Dispute Resolution. Therefore, I give the landlord one month from today's date to have these things installed, along with finishing of the caulking and making sure the door opens and closes freely and without gaps.

As discussed during the hearing, the tenant will try the code on the French door lock to determine whether she is able to lock the door from the outside. If not, it is upon the tenant to notify the landlord of such and the landlord will reset the code. The landlord will also provide the tenant with a key to the French door lock.

As far as the tenant's desire to place furniture or objects in front of the door at night in order to sleep, that is her prerogative and she may continue to do so; however, I find a working lock on the French door is sufficient to meet the landlords' obligations to the tenant.

I do not authorize the tenant to reduce rent for repairs not made because I am of the view her actions stalled the completion of the renovation project.

In light of all of the above, **I issue the following orders to the landlords:**

1. Apply caulking, install a screen, install window coverings on or around the French door; install a supplemental heat source in place of the baseboard heater that was removed; and, make any necessary adjustments so that the door opens and closes easily and without gaps. These tasks are to be completed within one month of today's date.
2. Provide a key to the French door to the tenant within 10 days of today's date.
3. Effective immediately upon receipt of this decision, the landlords must give a written notice of entry that complies with section 29(1)(b) of the Act before entering the unit unless one of the circumstances of 29(1)(d)(e) or (f) apply.

I further order that the tenant:

1. Not interfere or prevent the landlords from entering the unit or finishing the tasks ordered under order #1 above where the landlords have given the tenant a notice of entry that complies with section 29(1)(b).

Conclusion

I have issued orders to both parties with a view to facilitating the completion of the window replacement project. From this point forward, the landlords are to give the tenant a written 24 hour notice of entry. I have denied the tenant's request for a rent reduction for repairs not made. I have dismissed the tenant's monetary claim with leave to reapply.

During the hearing it was recognized the tenant has paid a non-compliant rent increase since January 1, 2018 and that she may deduct \$180.00 from a subsequent month's rent; however, the landlords remain at liberty to serve the tenant with a proper Notice of Rent Increase so as to increase the 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: June 28, 2018

Residential Tenancy Branch