



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to dispute a rent increase, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), and for the recovery of the filing fee paid for this application.

The Tenant and an agent for the Landlord (the “Landlord”) were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenant, along with a copy of her documentary evidence. The Landlord did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Tenant named two companies as Landlord on the Application for Dispute Resolution. During the hearing, the agent for the Landlord clarified the name of the primary Landlord. Therefore, the Application was amended to correctly name the Landlord.

The Tenant filed an Amendment to the Application for Dispute Resolution on October 17, 2018 and included a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day

Notice”), although did not add the claim to the Application. This was clarified with both parties at the outset of the hearing and they were in agreement that there remained a 10 Day Notice in dispute. As such, the Application was amended to add a claim for the Tenant to dispute the 10 Day Notice.

The Tenant applied for an Order for the Landlord to comply with the *Act, Regulation*, or tenancy agreement. However, through the Tenant’s testimony and documentary evidence, it was evident that she was seeking monetary compensation. As such, this decision will address whether the Tenant is entitled to monetary compensation.

These amendments to the Application for Dispute Resolution were made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Should the 10 Day Notice be cancelled?

If the 10 Day Notice is upheld, is the Landlord entitled to an Order of Possession?

Was an illegal rent increase provided to the Tenant?

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2017. Rent was initially \$1,025.00 due on the first day of each month, as well as \$25.00 for parking and \$25.00 for a storage locker. Rent was increased for November 1, 2017 to \$1,066.00, plus \$25.00 for parking and \$25.00 for a storage locker. A security deposit of \$525.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Tenant applied to dispute a rent increase that was provided to her on June 30, 2018, stating that rent would be increased from \$1,025.00 to \$1,066.00 beginning on October 1, 2018. The Tenant stated that she is not disputing the amount of the rent

increase, but instead that it should start November 1, 2018, due to when her tenancy began.

The Notice of Rent Increase was submitted into evidence and had been amended by the Landlord to indicate the rental increase start date from October 1, 2018 to November 1, 2018. The Landlord provided testimony that the increase start date was amended after being brought to their attention by the Tenant.

The parties were in agreement that the rent increase to \$1,066.00 (not including parking or storage locker fees) was to start November 1, 2018, and that since the notice was corrected to November 1, 2018, the Tenant is no longer disputing the rent increase.

The Tenant also applied for monetary compensation in the amount of \$3,395.84. She testified that at the end of July 2018, all of the storage lockers in the building were opened for maintenance, although she was not notified that this would be happening.

On August 13, 2018, the Tenant stated that she looked in her storage locker and noticed that most of her belongings had been stolen, leading her to believe that her storage may have been left unlocked. The Tenant called the police and a security video was sent to them.

The Tenant submitted into evidence a list of items that she is missing, along with estimates of the cost to replace the items. The Tenant stated that she priced out the items for purchase at a store, which is how she estimated the value. She stated that most of the items were new or hardly used, and included camping supplies and tools. The total for the items is estimated by the Tenant at \$3,395.84. The Tenant stated that she did not have insurance to cover the loss of the items.

The Landlord testified that on July 25, 2018, a fire inspector attended the rental building and required access to various areas of the building. The Landlord stated that he was not aware that the Tenant's storage locker did not have a cage surrounding like the other units, and therefore opened the door to the storage without realizing that this would directly lead to the Tenant's storage unit. Had he known, the Landlord testified that he would have provided notice to the Tenant that he would require access to her storage.

The Landlord is not sure whether he accidentally left the door unlocked, but states his usual practice of closing the door and then double checking that it is closed and locked before leaving. The Landlord noted that there is no proof of these items being in the

storage unit prior to them being stolen, and that the Tenant has not taken depreciation into account, instead listing the cost of the items when purchased new.

The parties were in agreement that a 10 Day Notice was served to the Tenant in person on October 16, 2018, and that an amount of \$2,341.00 remains owing towards rent.

During the hearing, the parties came to an agreement regarding the 10 Day Notice and outstanding rent that is owing to the Landlord. The Settlement Agreement will be outlined below.

Settlement

In accordance with Section 63 of the *Act*, the parties may be assisted to come to a settlement agreement and that agreement may be recorded in the form of a decision. During the hearing, the parties came to the following settlement agreement regarding the 10 Day Notice and outstanding rent:

1. The parties are in agreement that an amount of \$2,341.00 is owed towards rent.
2. The Tenant will make a payment of \$500.00 towards the rent owing by midnight on November 23, 2018.
3. The Tenant will make a payment of \$380.00 on the 15th day of each month towards the outstanding rent.
4. The additional payments of \$380.00 will continue until the outstanding rent of \$2,341.00 is paid off.
5. Should the Tenant not abide by the payment plan outlined above, the Landlord may choose to serve the Order of Possession on the Tenant, which is effective 2 days after service.

During the hearing, the parties confirmed that they were entering into the settlement agreement voluntarily and did not feel pressured to do so. Both parties also confirmed their understanding of the final and binding nature of a settlement agreement.

Analysis

The settlement agreement above resolves the dispute over the 10 Day Notice. The remaining claims of the Tenant are the dispute over the rent increase and the monetary claims of the Tenant for compensation.

As noted in the background section, the parties were in agreement that the Notice of Rent Increase was corrected to November 1, 2018 and therefore is no longer in dispute. Therefore, I find that no findings are necessary regarding the rent increase.

As for the Tenant's claims for monetary compensation, in order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Although the Tenant submitted a list of the items in the storage locker that she compiled to the best of her memory, I find insufficient evidence to prove, on a balance of probabilities, that the Tenant experienced a loss due to a breach of the *Act* by the Landlord. Without evidence before me of the presence of these items in the Tenant's storage locker, I am not satisfied that a loss was proven.

I also find insufficient evidence to establish the value of the Tenant's loss. Although an estimate of the replacement cost of the items was provided, without additional documentary evidence as to the value or age of the items, it is difficult to determine the value of the loss.

I also note that had the Tenant been found to have proven the loss or value of the loss, a party claiming a loss has a duty to mitigate their losses in accordance with Section 7 of the *Act*. As the Tenant did not have insurance, I find that steps were not taken to minimize any losses that may have occurred through the loss of belongings on the rental property.

I am not satisfied of the items lost or the value of those items, and therefore find that the Tenant did not meet the four-part test. As such, I decline to award any compensation to the Tenant for the items claimed.

As the parties came to a settlement agreement and the remainder of the Tenant's claims were dismissed, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The parties are ordered to follow the settlement agreement as outlined above. To uphold the settlement agreement, the Landlord is issued an Order of Possession, which is effective two days after service on the Tenant. This Order must only be served if the Tenant does not comply with the terms of the settlement agreement.

The remainder of the Tenant's claims are dismissed, without leave to reapply.

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: November 14, 2018

Residential Tenancy Branch