



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF, LRE, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute a notice of rent increase, to suspend or set conditions on the landlord's right to enter the rental unit, to have the landlord to comply with the Act, regulation and/or the tenancy agreement a monetary order and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Preliminary and procedural matters

In this case, the landlord confirmed that they received the tenants' evidence. The landlords confirmed they did not serve the tenants with their evidence.

As the tenants were not served with a copy of the landlords' evidence as required by the Residential Tenancy Rules of Procedure, I find it would be unfair and prejudicial to review the landlords' evidence. Therefore, I have excluded the landlords' evidence from this proceeding.

It should be noted that during the hearing the male landlord behaviour was inappropriate. The male landlord interrupting and was argumentative during the hearing. The landlords made the choice of disconnect from the hearing before the tenants' application could be fully heard. The landlords also made threats of eviction during the hearing.

Since the landlords exited the hearing prior to the tenants' application being fully heard; the hearing proceeded in their absence.

Issues to be Decided

- Should the notice of rent increase be cancelled?
- Should the landlords right to enter the rental unit be suspended?
- Should the landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that the fixed term tenancy began on March 1, 2014 and was to expire on February 28, 2015. The parties entered in to a second fixed term tenancy agreement, commencing March 1, 2015 and was to expire on February 26, 2016 and at the end of the term the tenancy continued as on month-to-month basis or another fixed term tenancy. The tenancy agreement indicates that rent in the amount of \$1,350.00 was payable on the first day of each month.

The tenant's agent testified that the landlord served a notice of rent increase that does not comply with the Act. The agent stated that the monthly rent is the amount of \$1,350.00, in which the rent increase should apply; not \$1,400.00, and the increase is greater than the allowable 2.5%.

The landlords acknowledged that the amount calculated in the notice of rent increase was greater than the 2.5% that is allowable due to a mathematical error.

The landlords testified that the tenant agreed to increase the rent by \$50.00 per month commencing October 2016. The landlords stated that the tenant would not enter into a new written agreement. The landlords stated that the base rent is \$1,400.00. The landlords stated that principals of estoppel should be applied in this case, as they have the right to rely upon the tenant's action of the tenant that this was an agreed upon rent increase.

The tenant's agent testified that there was never an agreement for an increase of rent. The agent stated that the tenant was paying \$50.00 more per month for the use of the storage area. The agent stated that the tenant stopped using the storage locker in December 2018 and stopped paying the extra \$50.00, as this was a separate agreement.

The tenant's agent stated that the tenant should be entitled to recover the \$50.00 they paid in January 2019, as the tenant was served with a notice of eviction and they only paid that amount to ensure that their tenancy continued.

The tenant's agent testified that the landlord comes to the rental unit without giving notice and on multiple times in a day. The agent confirmed that the landlords hold a portion of the property for their own use.

The tenant's agent testified that at the start of the tenancy the landlord was to install a lock on the door that gives access to their rental unit that is off the storage area. The agent stated that the landlord never installed the lock. The tenant seeks that the landlords comply with the tenancy agreement by install a lock on the door.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The rent increase does not comply with the Act, as the amount of the increase is greater than the allowable amount. Therefore, I cancel the notice of rent increase.

Further, the parties disagree on the amount of rent payable. The evidence of the landlords was that there was a verbal agreement to increase the rent to \$1,400.00. The evidence of the tenant was that they did not agree to increase the rent that they were paying an additional amount of \$50.00 for the use of a storage area, which they are no longer using.

In this case, I find both versions are possible; however, I find that I must rely upon the written tenancy agreement, which states rent is \$1,350.00, as any changes to the agreement must be done in writing.

Further, even though the tenant has been paying the extra \$50.00 per month, I find because the parties do not agree that this was for rent. I cannot apply principles of estoppel as a storage fee that is not included in the rent can be stopped at any time. Therefore, I find the rent is \$1,350.00 per month, payable on the first of each month.

The landlords are at liberty to serve the tenant with a **new notice of rent increase**, increasing the rent in accordance with the 2019 allowable rent increase of 2.5%, on the rent of \$1,350.00.

As the tenants overpaid rent for the month of January 2019, I authorize the tenants a onetime rent deduction in the amount of **\$50.00**, from a future rent payable to the landlords.

In this matter, I cannot restrict or set conditions on the landlords' right to enter the property as they hold a portion of the property for their own use.

Further, I cannot restrict the landlords' right to conduct business such as speaking to tenants or serving documents.

However, the landlords must ensure that they give the tenants 24 hours written notice if they intend to enter the rental unit. The notice must state the date, time and the purpose entry.

The tenants seek the landlords to install a lock on their rental unit door that gives access to the storage area. I do not find that request unreasonable as the tenants' rental unit should be secure from any unauthorized entry.

This is consistent with clause 3 of the tenancy addendum that states in part, that

“one room in the basement will be used by the landlord for storage and will be locked”.

[Reproduced as written]

Further, the landlords exited the hearing prior to providing any testimony on the issue of the lock. Therefore, I accept the undisputed testimony of the tenant that a lock is required to secure their rental unit.

I Order the landlords to install a lock on the door of the tenant's rental unit that is in the storage area. The lock is to be installed no later than March 31, 2019.

As the tenants have been successful with their application, I find the tenants are entitled to recover the filing fee in the amount of \$100.00. I authorize the tenants a onetime rent reduction in the amount of **\$100.00** to recover the cost of the filing.

The total amount of the onetime deduction is **\$150.00**, comprise of the above noted amounts.

Conclusion

The tenants' application to cancel the rent increase is granted. The tenants' application to have the landlord comply with the tenancy agreement is granted.

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 21, 2019

Residential Tenancy Branch