



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR DRI ERP FFT LRE MNDCT OLC PSF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- disputing a rent increase;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude within the time scheduled, and was adjourned to continue. The tenant and an agent for the landlord attended the hearing on both scheduled dates, and each gave affirmed testimony. The landlord also called a witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

Some material provided by the tenant was not provided within the time required under the Rules of Procedure, and only the material provided by the parties within the time limits has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord agreed to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and agreed that the tenancy continues. Therefore, I cancel it.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a rent increase contrary to the *Act* or the regulations?
- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that an order should be made limiting or setting conditions on the landlord's right to enter the rental unit?
- Has the tenant established a monetary order as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of the \$100.00 filing fee?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to maintenance and repairs?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law, and more specifically repairs and parking?

Background and Evidence

The tenant testified that this month-to-month tenancy began in July, 2002, and the tenant still resides in the rental unit. Rent in the amount of \$758.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$240.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 3rd floor in a 4-floor complex, including the basement. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord raises rent on December 1 each year, and uses a new formula. The landlord demanded more money in January, 2019, bringing it to \$787.00 per month. The landlord used the January, 2019 percentage amount in the rent increase that was effective December 1, 2018.

The rental building suffered a flood in March, 2015 from heavy rain and the roof was torn off the building. It was like an earthquake and the whole building was shaking. The tenant requests an order that the landlords change the bedroom carpet, remove old flooring in the bathroom and replace it, install a new bathtub, fix a broken bedroom door and remove mold and stain on the ceiling, and paint. The mail slot is in the door of the tenant's apartment and people can put their hand right inside. The landlord has changed them on some other units, but has not changed the tenant's. When asked if the tenant had ever asked the landlord to make the repairs, the tenant testified that the landlord kept saying later, but it never happened. The previous manager had things done in short order and now maintenance requests have been ignored.

The tenant also testified that the landlord's agents continue to breach the *Act* by entering the rental unit, and described a situation in January, 2019 wherein one of the landlord's agents and another man broke into the rental unit with a key and caught the tenant naked. There was no emergency, no notice given to the tenant, and no consent given by the tenant.

The tenant also testified that other people are always parked in the tenant's parking spots, but the tenant is not sure who.

The tenant asks that the landlord comply with the *Act* and the tenancy agreement respecting the tenant's privacy for herself and her child to live there, and specifically the health and safety respecting marihuana smoking on the property. Further, the landlord evicted the tenant's son around Christmas in 2017. The resident manager and police came to the rental unit, and the resident manager told the tenant's son to leave. When asked if her son is an adult, the tenant refused to reply, stating only that the child is her dependent and she rented the rental unit for 2 people, and the landlord has no right to discriminate.

The tenant seeks recovery of the \$100.00 filing fee.

The landlord's agent testified that historically, the tenant won't allow annual suite inspections. March 21, 2013 was the last time an agent of the landlord was in the rental unit and a new tub surround was installed. There have been no maintenance requests from the tenant until this week. If the tenant won't let the landlord's agents in the apartment, and refuses to put in a request, the landlord cannot find out what work is required or gets accused of evading the tenant's privacy. Requests for repairs can be made on-line on the landlord's website, but not verbally. Further, none of the repairs described by the tenant as being required are emergency repairs.

The landlord's agent further testified that part of the roof of the building flew off in a storm in 2015, but the tenant resides on the 3rd floor of a 4-story building and the rental unit did not suffer any damage. Nothing in the tenant's evidence shows mold. The landlord is happy to fix things, and is a reputable company and not a shoddy operation.

The tenant had testified that on January 12, 2018 the building manager entered the tenant's rental unit with another person, when in actuality the fire alarm panel went off and the fire department attended. There was no fire, but the fire alarm kept sounding. The fire department ordered the landlord to get an electrician to trouble-shoot by checking every sensor which required going to all common areas and apartments. The tenant is not telling the whole story about how that happened, and an emergency existed.

The landlord did not evict the tenant's son. He was 4 or 5 years old at move-in. The tenant sent an email to the landlord's agents dated December 16, 2017 stating that: "I forbid my son to come to my apartment;" and, "I don't specify how much time this will be. He does not live in the building." The landlord's agents had no dealings with the tenant's son and don't know of his situation. It had nothing to do with the landlord.

With respect to the tenant's application for an order that the landlord provide services or facilities, the landlord's agent testified that no service has been taken away. There are 3 buildings and open parking. The tenant has designated stalls, but has not suffered any inconvenience; the tenant has never had a vehicle.

The landlord's agent submits that the allegations made by the tenant are not fair. Last August a Notice of Rent Increase was served which is what kicked this off. The tenant is trying to use the process to have non-emergency improvements completed. The carpet is quite old, but the tenant has chosen that by not asking or allowing the landlords to inspect.

With respect to the allegation of marihuana use in the building, the landlord's agent testified that it just became legal, but the landlord has always tried to investigate and have it resolved, but it's difficult to figure out which apartment it comes from. It's not as simple as kicking them out. The landlord does not condone it and tries to resolve it.

The landlord's witness is the resident manager and testified that the last time she talked to the tenant's son was in December, 2017. He wanted to get into the tenant's apartment and the witness told him he could not enter because the tenant had emailed saying to not let him in. The police were called, and the witness showed the police the

tenant's email. The tenant was not in town at the time. The witness did not evict the tenant's son.

There have been no written maintenance requests in the last 5 years from the tenant that have not been actioned, and any received were acted on by the witness right away. There was a leaky tap once, but that was all taken care of immediately. The tenant never answers the door when the witness goes there.

Analysis

Firstly, with respect to the rent increase, the tenant testified that the landlord uses a formula for 2019 for the increase effective December 1, 2018. I agree that the percentage amount that a landlord could increase rent was 3.7% in 2017 and 4% in 2018. That means that if the increase became effective in 2018 the rate of 4% applied. In this case, the landlord has provided a copy of the Notice of Rent Increase dated August 24, 2018 stating that the last increase came into effect on December 1, 2017. It also states that the current rent was \$725.00 per month; the rent increase was \$29.00 per month and the new rent would be \$758.00 per month starting on December 1, 2018. The landlord also wrote a letter to the tenant explaining that. I find that the landlord has not increased rent contrary to the law, and the tenant's application disputing the rent increase is dismissed.

The *Residential Tenancy Act* defines "emergency repairs" as:

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The tenant has not provided any evidence to support the claim that any emergency repairs are required in the rental unit, and I dismiss that portion of the tenant's application.

I also decline to make any orders with respect to limiting or setting conditions on the landlord's right to enter the rental unit. I find that the landlord's agents are well-aware of their requirements under the *Act*, and I am not satisfied that the tenant has established that any agents of the landlord breached that Section.

Where a landlord restricts or removes a service or facility, the landlord must give the tenant notice and reduce rent accordingly. In this case, the tenant claims that her parking spot has been used by someone else, but the tenant has not asked the landlord about that, and the landlord's agent testified that the tenant has never had a vehicle since the beginning of the tenancy. The tenant didn't dispute that.

I find the tenant has failed to establish that her son was evicted, and I find the tenant's application to be frivolous and without merit. Since the tenant has not been successful with the application the tenant is not entitled to recovery of the \$100.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2019 was cancelled by consent on May 14, 2019 and the tenancy continues.

For the reasons set out above, the balance of the tenant's application is hereby 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: May 29, 2019

Residential Tenancy Branch