



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: DRI, PSF, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order disputing a landlord rent increase that is above the amount allowed by law.
- b. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides as the landlord acknowledged receipt of the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order disputing a landlord rent increase that is above the amount allowed by law?
- b. Whether the tenant is entitled to an order that the landlord provided services or facilities required by the tenancy agreement or law?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would begin on July 1, 2014 and continue on a month to month basis. The tenancy agreement provided that the tenant would pay rent of \$850 plus ¼ of the utilities per month. The landlord also lives on the rental property. The written tenancy agreement further provided that the tenant was not entitled to the use of the laundry facilities.

In a hearing held on April 29, 2019 the tenant's application to cancel a one month Notice to End Tenancy for repeated late payment of rent was dismissed and the landlord was awarded an Order of Possession effective May 31, 2019. However, the landlord did not receive the decision and Order of Possession in a timely manner. They accepted the rent for May and June without qualification. The landlord was advised that they had reinstated the tenancy by accepting the rent and they would have to serve a new Notice to End Tenancy. The representative of the landlord advised that they posted a new Notice to End Tenancy for repeated late payment of rent at the end of June 2019. It does not appear that the tenant has applied to have that Notice cancelled. The landlord has not filed an Application for Dispute Resolution to seek an Order of Possession. Those issues are not before me in the Application for Dispute Resolution.

The tenant gave the following relevant evidence:

- She is a good tenant and pays the rent.
- In late 2018 the landlord demanded a rent increase of \$100 per month. The landlord failed to give written notice in the approved form required by law. She paid an additional \$50 per month commencing November 1, 2019 and for each month thereafter until June 2019. The landlord has not picked up the rent for July.
- The \$50 per month additional rent she has been paying is more than permitted under the Residential Tenancy Act.
- The parties have not agreed in writing to the tenant paying \$900 per month.
- The landlord has allowed her to use the laundry one time a week since she moved into the rental unit
- The tenant raised a number of other matters which are not relevant to the issues she raised in the Application for Dispute Resolution including alleging the landlord is a racist, wondering why the landlord hates her, the landlord is harassing her. I ruled those issues are not relevant and inadmissible.

The agent for the landlord testified as follows:

- The tenancy agreement provides that the tenant was to pay \$850 per month plus $\frac{1}{4}$ of the utilities. The tenant has failed to pay for utilities and owes in excess of \$3000 for her share of the utilities.
- The tenant orally agreed to pay rent of \$900 per month commencing November 1, 2019.
- The washing machine is in the landlord's premises. The tenancy agreement provides that the tenant was not entitled to use the laundry facilities. The landlord on occasion permitted the tenant to use the laundry facilities out of kindness to the tenant. The landlord no longer feels comfortable to allow the tenant into their premises to use the laundry.

Tenant's Application for an Order reimbursing her a rent increase not permitted by the Act:

I determined the tenant is entitled to reimbursement of the additional rent paid of \$50 per month for the period November 1, 2019 to June 1, 2019 for the following reasons:

- The tenancy agreement provides that the rent is \$850 per month. While it further provides that the tenant must pay $\frac{1}{4}$ of the utilities this obligation does not on its own make the utility payment rent. The landlord has the right to file a claim for a monetary order to recover this amount.
- Section 40 to 44 of the Residential Tenancy Act provides that a landlord must not increase the rent except in accordance with these sections which require written notice in the approved form, at least 3 months notice and rent being limited to the amount set out in the Regulations (which at the moment is 2.5%). The Act further provides that if a landlord collects rent in an amount that is not in accordance with the Act the tenant is entitled to recover the rent increase.
- The landlord failed to comply with the Act. The landlord failed to give written notice and the amount exceeds what is permitted.

I determined the tenant is entitled to recover the excess rent of \$50 per month for the period November 1, 2019 to June 1, 2019 or the sum of \$400. The rent remains at \$850 per month until varied in accordance with the Act. Thus the rent for July is \$850. The landlord has not picked up the rent for July.

Tenant's Application that the landlord provide services or facilities required by the tenancy agreement or by law:

I dismissed the tenant's application that the landlords provide access to laundry facilities once a week. The written tenancy agreement provides that laundry is not included with the rent. The fact that the landlord has permitted access to the laundry facilities from time to time out of kindness does not convert this to a legal obligation.

Conclusion:

I determined the landlord has collected a rent increase of \$50 per month commencing November 1, 2018 to June 1, 2019 totalling \$400 which fails to comply with the Act. I ordered that the landlord pay to the tenant the sum of \$400 plus \$100 for the cost of the filing fee for a total of \$500. The rent remains at \$850 per month payable in advance on the first day of each month. I dismissed the tenant's claim that the landlord provide laundry facilities as that was not included as part of the rent in the tenancy agreement.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent(s) must be served with a copy of this Order as soon as possible.

Should the respondent(s) fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: July 08, 2019

Residential Tenancy Branch