Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, LAC, PSF OLC, RP

Introduction

The tenant applies seeking a variety of orders relating to two main issues: a rent increase and the landlord's closing of an exterior door in the building. She is also concerned about the possibility of a surveillance camera in her hallway and yard.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant been given a rent increase that is not in accordance with the law? Has the landlord acted improperly by closing off a door to the building housing this rental unit?

Background and Evidence

The rental unit is a one bedroom suite in a very old, three storey house. The home contains a total of seven suites. The tenant's rental unit is on the second floor. There is another floor above hers and a main floor and basement below. The house is one of a number in the area that has been deemed a heritage home. Twenty eight of them are operated as social housing facilities by the landlord, a non-profit society. At least this one is operated by the landlord under an agreement with the British Columbia Housing Management Commission (BC Housing).

This tenancy started in September 2018. The current rent is $1064.00. According to the tenancy agreement the tenant is to pay $29.00 as her share of utility costs. The

landlord has recently raised that share and it is this increase that the tenant challenges in this application.

The tenant does not pay the full rent. It is subsidized under an agreement between her and BC Housing whereby the tenant pays approximately 30% of her income to rent and BC Housing pays the remainder, directly to the landlord.

At the start of this tenancy the occupants of suites on the second floor had access to that floor's hallway and their suites either by stairs leading to the front entrance or by a door at the other end of the second floor hallway, leading to an exterior fire escape. The door had a lock in its knob that was keyed to the front door. The tenant's house key could work both doors. She could exit the building through the fire escape door and down the fire escape into the back yard and then return the same way.

The fire escape is a dark metal structure providing stairs up and down the building from the top floor to the basement. There a landing outside the second floor door. It is approximately 1 metre by 3 metres in size and has been used by tenants as a balcony.

As well, at the back of the yard, in an area leased from the City, the landlord has a "garbage room" where tenants are expected to take their refuse.

The landlord has been having difficulties with vagrants making use of the fire escape and the landings. This has caused noise and disturbance to the tenants in the building and a variety of items have been left on the landing by the vagrants.

As a response, in mid July the landlord put an alarm on the fire escape door. It goes off anytime the door is opened. At the end of July the landlord rekeyed the lock on the fire escape door and now the tenant's key does not work in it. A sign on the door says "emergency exit only.' The landlord also indicated that security cameras would be installed in the hallway and the yard. They have not been installed yet.

As a result, the tenant cannot enjoy the fire escape landing. Perhaps more importantly, If she wishes to go to the garbage room, instead of just going through the fire escape door, down the fire escape and across the back yard, she is now required to go out the front door, leave the property and walk two or three houses down the street, traverse a "green way" path between houses to the lane and walk back down the lane to the garbage room behind the house containing her suite.

Analysis

Rent Increase

As pointed out by the landlord, it is operating a not-for-profit accommodation in conjunction with BC Housing.

Section 4(k) of the *Residential Tenancy Act* (the "*Act*") provides that the *Act* does not apply to "prescribed tenancy agreements, rental units or residential property." "Prescribed" means "as set out by regulation" and the Residential Tenancy Regulation, regulation 2 states that s 43 of the *Act*, which regulates rent increases, does not apply to housing societies that have an agreement with the British Columbia Housing Management Commission.

However, it is the landlord's position that the utility payment under the tenancy agreement is not "rent" and I find a reasonable basis to agree. The tenancy agreement appears to separate the rent from the utility charge (even though they are under the same heading of "rent" in the agreement). The agreement notes that each of the rent and the utility charge may separately "be adjusted from time to time." This reinforces the proposition that they are separate and that the utility payment is not rent.

And so, whether or not the rent increase provisions in the *Act* apply to this tenancy, they would not apply to utility charges because utility charges are not "rent."

The term in this tenancy agreement appears to authorize the landlord to increase the utility charge whenever it wishes and in any amount.

In my view there is a reasonable argument to be made that a term in a contract that permits one party to unilaterally increase a charge on the other without explanation or formula is an unconscionable term and of no force (it should be noted that the landlord's notice to increase the charged laid out a financial explanation for the increase). However, that defense to the utility charge increase was not argued at this hearing and so I make no determination on that point. I consider it to be an important point and so I grant the tenant leave to re-apply if she so wishes in order to present this aspect of her opposition to the increase.

The Fire Escape Door

The evidence shows that the fire escape door, the landing beyond it and the direct access it provided to the yard below it were of significant benefit to the tenant. She could make use of the landing and have quick access to the yard and the garbage room.

I find that the use of the fire escape door was an amenity in the nature of a facility provided with this tenancy. I consider it to be a non-essential facility as the rental unit is perfectly habitable without the availability of the door.

Section 27 of the *Act* deals with the withdrawal of services or facilities. It provides:

> **27** (1) A landlord must not terminate or restrict a service or facility if
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.
>
> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case the landlord's letter of July 15 indicating that fire escape door access had ended was not the written notice prescribed by s. 27; it did not give 30 days' notice nor did it address the reduction in the value of the tenancy agreement resulting termination of the facility.

Therefore**, I direct that the landlord forthwith provide this tenant with access to and from the second floor hallway through the fire escape door located on that floor and that it maintain that access for the tenant until the facility is lawfully terminated in accordance with s. 27(2) above.**

Should the tenant disagree with the landlord's assessment of the reduction in value of her tenancy agreement, she is free to apply for a determination of the fair value.

Security Cameras

The landlord's letter of July 15 to the tenant indicated that it would install a camera in the second floor hall and in the yard. The tenant is worried about her privacy.

I must decline to adjudicate this aspect of the tenant's claim. The cameras have not yet been installed and so the coverage they might capture is still uncertain. The landlord's handling of personal information from such a camera is still unknown. I grant the tenant leave to re-apply if and when a camera is installed on the property.

I would refer the parties to the *Personal Information Protection Act*, S.B.C. 2003, c. 63 and to the Commissioner operating under that *Act* for guidance with what may or may not be permissible in the case of private camera surveillance and the retention of information gathered by that surveillance..

Conclusion

The tenant's application is allowed in part. There is no claim for recovery of a filing fee.

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: September 19, 2019

Residential Tenancy Branch