



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following:

- to dispute a rent increase;
- for a rent reduction;
- for an order directing the Landlord to comply with the Act, regulation or tenancy agreement;
- for an order restricting or suspending the Landlord's right to enter the residential property; and
- to recover the \$100.00 cost of the Tenant's Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord said he did not submit any documentary evidence to serve on the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the rent increase above what is allowed by law, and if so, what should it be?
- Should the Landlord's right to enter be suspended or restricted?
- Is the Tenant entitled to an Order for the Landlord to comply with the Act, Regulation or tenancy agreement?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2017, running to October 31, 2018, at which time it became a periodic tenancy. The Parties agreed that the monthly rent started at, and still is \$4,700.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$2,350.00, and no pet damage deposit.

Rent Increase

The Parties agreed that the Landlord gave the Tenant three months' notice of a rent increase in July 2019, raising the rent by \$120.00 per month as of November 1, 2019. The Parties agreed that this rent increase is more than is allowed by the RTB, which is 2.5% in 2019 or \$117.50 in this case. In the hearing, the Landlord said that the Tenant can deduct the excess amount of \$2.50 from her rent starting in November 2019.

Landlord's Right to Enter (second and third issues noted above)

In the hearing, the Tenant said:

We want our landlord to follow the legal rules and not disturb our privacy. He comes to our house and uses the garden hose without permission and goes on to our property to check the garden.

The Tenant said, and the Landlord agreed that he scared the Tenant's mother once, when he arrived without any advance notice.

The Tenant also said that the Landlord comes to the house "...often without permission when it's not an emergency". She said the Landlord disrupts their privacy, coming to the house without having served them with 24 hours' written notice.

The Landlord did not deny that he attends the rental unit without giving 24 hours' notice required by the Act, but he blamed it on the gardener's indeterminate schedule, given the effect weather can have on the gardener's ability to plan ahead. The Landlord said the gardener requests that the Landlord attend from time to time for certain issues with managing the residential property landscaping.

The Tenant said:

Give me the notice in a proper letter. He sent an email or a text message; I'm not accepting that. I told him so many times, but he didn't follow it. He didn't say the proper time and date. Sometimes it's a gardening thing. The owner doesn't need to come with the gardener. Please follow the rules.

The Landlord said that he is a surgeon with 40 years' experience, and as such, he is accustomed to keeping correct patient records. He indicated that he has kept records of his attendance at the rental unit. The Landlord gave a detailed explanation of dates and times in which he has attended the rental unit in the last two years, along with the reasons for these visits, which included:

- Internal renovations involving three contractors;
- Building a series of rock walls for the garden;
- Improving the lighting at the Tenant's request;
- Attending to fix a leak in the Tenant's *en suite* bathroom;
- Attending with the gardener at his request;
- Re-grouting on the patio, at the Tenant's request;
- Applying mannitol to the lawn to kill parasitic beetle larvae;
- Fixing fire alarms in the rental unit; and
- Replacing the broken washing machine.

The Tenant acknowledged that the Landlord has fixed things like the washing machine and the toilet. However, she said that the Landlord comes to the property even when they do not ask for anything. The Tenant said the Landlord often comes with the gardener, which she said is unnecessary and intrusive.

The Landlord said that the gardener sometimes asks him to attend the residential property, so that they can discuss something like how much to cut the neighbour's tree that overhangs the residential property. The Landlord said that the gardener cannot schedule when he attends the property, because so much depends on the weather and the gardener's other obligations. As such, the Landlord said it is not possible to give the Tenant 24 hours' notice of these visits.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Rent Increase

RTB Policy Guideline 37 "Rent Increases" ("PG #37") addresses rent increases permitted under the Act. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months before the increase is to take effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43(1), which states that a landlord may impose a rent increase only up to the amount:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

PG #37 also says: "Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount."

The annual allowable rent increase percentage is the amount calculated pursuant to section 22 of the Residential Tenancy Regulation. Landlords and tenants may call the RTB to learn how much of an increase is allowable each year. The allowable rent increase for 2019 is 2.5%.

The Landlord was allowed to increase the rent in 2019 by 2.5% of \$4,700.00 or \$117.50 per month to \$4,817.50. Accordingly, the Landlord's rent increase to \$4,820.00 overcharged the Tenant by \$2.50 a month as of November 2019.

Based on the evidence before me and pursuant to the legislation and Policy Guidelines, I find that it was reasonable for the Landlord to impose a rent increase starting in November 2019. I find that the Landlord gave the Tenant the required three months' written notice in the approved form; however, I find that he increased the rent beyond what is allowed by the legislation. As a result, I find that the rent increase in this situation was invalid in this regard; however, as the date of the increase has not arrived yet, the Tenant has not suffered any monetary loss, and as a consequence, I find that the Landlord may increase the rent, as long as it is consistent with the legislation.

I Order that the Tenant's rent is **\$4,817.50** per month from November 1, 2019 forward, until changed in due course in accordance with the Act, Regulation and Policy Guidelines.

Landlord's Right to Enter

Sections 28 and 29 of the Act set out the balance that must be achieved between a tenant's right to quiet enjoyment of the rental unit, free from unreasonable disturbance, and a landlord's right to enter the rental unit for required maintenance and statutorily authorized inspection. These sections are as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

RTB Policy Guideline #6 ("PG #6") deals with a tenant's entitlement to quiet enjoyment of the residential property:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. **Frequent and ongoing** interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

[emphasis added]

It is important to balance the Parties' rights in this regard. I find it more likely than not that the Landlord's visits to the residential property have been based on a desire to maintain the property for the benefit of the Tenants, as well as to maintain his asset. However, I also find from the evidence before me on a balance of probabilities that the Landlord has not always considered or respected his obligation to respect the Tenants' right to quiet enjoyment of the residential property.

In the hearing, the Landlord agreed that from now on, he will give the Tenant proper notice of his intended visits. The Parties agreed that the Landlord may attend the residential property to give the Tenant at least 24 hours' notice of his planned visits, by putting a letter in the mailbox containing the notice, and not contacting the Tenants when he delivers such a notice. The Landlord agreed that any such notices must state the time and date of the visit, and a reasonable reason for it, in compliance with the Act.

In the hearing, the Tenant agreed that the gardener may attend the residential property without giving 24 hours' notice, due to the uncertainty of planning visits around the weather. However, I agree with the Tenant that it is not necessary for the Landlord to attend with the gardener as frequently as he has in the past. Accordingly, I find it reasonable in the circumstances that if the Landlord finds it necessary to accompany the gardener to the property, that the Landlord find a way to give some notice to the Tenants.

For instance, if the gardener wants the Landlord's advice on how much to prune a neighbour's tree, for example, the Landlord must work with the gardener to schedule a timeframe in which they anticipate meeting at the residential property. They could check the weather and determine a range of days in the coming week(s) in which they might be able to meet without severe weather interfering. While the Landlord would not provide the Tenant with a specific date and time, he could give the Tenant advance notice that he is likely to attend within a particular time period. Still, I caution the Landlord to limit his attendance at the residential property, as much as possible, to comply with the legislation.

I find that the Tenant was successful with her Application and I award her recovery of her \$100.00 Application filing fee. Section 72 of the Act gives me authority to Order the repayment of a fee for an application for dispute resolution. As such, I authorize the Tenant to deduct \$100.00 from one future rent payment in order to satisfy this award.

Conclusion

The Tenant's Application is successful. The Landlord served the Tenant with sufficient notice of a rent increase; however, the increase would have exceeded the legal amount allowed by the legislation per month. As such, pursuant to section 43 of the Act and section 22 of the Regulation, I order that the Tenant's rent will increase to only \$4,817.50 per month from November 1, 2019 forward, until the next rent increase that is consistent with the Act and regulation.

I find that the Landlord breached the Tenant's right to quiet enjoyment of the residential property by attending there without having given proper written notice to the Tenant. I Order the Landlord to provide the Tenant with written notice of any visits to the residential property. The notice will include the date, time and reason for attending the residential property. In order to give this notice, the Landlord will attend the residential property solely to place the notice in the rental unit mailbox, leaving immediately thereafter, without knocking on the door or contacting the Tenants in any way.

The Landlord is granted an exception to the notice required by the Act in circumstances when the gardener needs to consult with the Landlord on the residential property. In this instance, the gardener and the Landlord will have to plan their joint visits to be sometime within a week's time frame, for instance, after written notice of the approximate timeframe of the visit has been delivered to the Tenant's mailbox.

Given the Tenant's success in her Application, I have awarded her recovery of her \$100.00 Application filing fee from the Landlord. The Tenant is authorized to reduce one future rent payment by **\$100.00** in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 3, 2019

Residential Tenancy Branch