



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LE PAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **DRI OLC RP**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to dispute a rent increase pursuant to section 41;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

The tenant attended the hearing and the landlord attended the hearing represented by property manager, JM ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings package and stated they had no issues with timely service of documents. The tenant acknowledged service of the landlord's evidence and also stated no concerns with timely service of documents.

Issue(s) to be Decided

Should the rent increase be upheld or cancelled?

Should the landlord be ordered to comply with the *Act* by doing repairs?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on January 1, 2016 with rent set at \$800.00 per month payable on the first day of the month. Included in the rent amongst other things is heat. The parties agree that this is an older building heated by hot water radiant heat. A security deposit of \$400.00 was collected at the commencement of the tenancy which the landlord continues to hold.

Rent Increases

The landlord testified that there were the following rent increases:

Date	Existing rent	Rent increase	New rent
June 1, 2017	\$800.00	\$25.00	\$825.00
September 1, 2018	\$825.00	\$33.00	\$858.00
September 1, 2019	\$858.00	\$21.00	\$879.00

The tenant testified that he pays his rent by pre-authorized debits directly from his bank account. On September 1, 2019, the landlord 'never took' the increased amount. Therefore, because the landlord didn't follow-up on their notice of rent increase, the rent increase is invalid.

The landlord testified that each rent increase was done in accordance with the *Act*. When the September rent was taken from the tenant's account, the tenant's bank had not amended the amount to be taken monthly in time for September 1st. This was fixed on September 19th and the tenant has been paying \$879.00 per month since October. The tenant is now in arrears for the missed \$21.00 payment for the increased rent for September.

Repairs

The tenant confirms the issues of repairs or maintenance of the common area carpets and the leaking faucet have been rectified by the landlord. He no longer seeks an order for repairs or maintenance to be done for those areas.

The tenant testified that his porcelain sink is chipped, rusty and green. It's an older sink and he wants the sink replaced. The landlord testified the building is older and the sink is in line with what an older building would have. There may be a small chip in the enamel but the usefulness of the sink is not diminished.

The tenant testified the heat in his unit is not warm enough. He cannot control the heat himself. It has been like this since he first moved in. The landlord testified this is the first time she's heard of this complaint from this or any other tenant in the building. It was not noted in the inspection done on September 10, 2019, submitted as evidence by the landlord.

The tenant testified his carpets haven't been cleaned since he's lived there. There is no linoleum in his unit so things like coffee spills are showing up. The landlord testified that

this is the tenant's responsibility according to the *Act* unless it's something like a major water leak in the building that caused the stains.

The tenant testified that 5 years ago, the previous landlord had dug up the paved parking lot and installed a weeping tile to drain it. The area dug up is a rut that he finds difficult to walk over. The tenant provided a photograph of the area. The landlord testified that there have been no complaints about the area and that it is safe to walk on.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state:

The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Rent increase

A landlord is entitled to increase rent pursuant to section 43 of the *Act* which states:

.

Amount of rent increase

1. 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.
2. A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

Section 3 of the Residential Tenancy Regulations states:

For the purposes of section 43 (1) (a) of the *Act*, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate.

The tenant is only disputing the last rent increase, effective September 1, 2019. The allowable rent increase for 2019 was set at 2.5%. $\$858.00 \times 2.5\% = \21.45 . The landlord increased the amount by \$21.00, which is \$.45 less than the amount they are entitled to increase it by. Pursuant to section 43(2), I find the tenant is not entitled to

dispute the rent increase that complies with section 3 of the Regulation. This portion of the tenant's claim is dismissed.

Repairs

Residential Tenancy Policy Guideline PG-1 provides guidance to landlords and tenants regarding each party's responsibility for the rental unit:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

Carpets

At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness.

In accordance with PG-1, I find the landlord is not responsible for ensuring the tenant's carpets are clean. This portion of the tenant's claim is dismissed.

Bathroom sink

Section 32 of the Act states:

A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The tenant has not raised an issue of any danger from using the sink, only his dissatisfaction with the age and condition. Given the age and character of the building and the units within, I am satisfied the condition of the sink meets the standard of complying with the health, safety and housing standards. This portion of the tenant's claim is dismissed.

Heating

The tenant did not raise an issue of lacking heat whatsoever, only that he finds his unit not warm enough. The landlord pointed out that no issues with a lack of heat was

raised with her during the annual inspection. Once again, I find the landlord is complying with section 32 of the *Act* in providing a residential property that complies with the health, safety and housing standards required by law. This portion of the tenant's application is dismissed.

Parking lot driveway

Turning once again to Rule 6.6, it is the tenant who bears the burden to prove that the unpaved portion of the driveway impedes his health, safety or housing standards. I have reviewed the tenant's photograph and conclude that, on a balance of probabilities, there is no such danger to the tenant. Given the tenant's own testimony that it was installed to assist with drainage, I find the unpaved portion of the driveway is necessary and unavoidable. This portion of the tenant's application is dismissed.

Conclusion

The tenant's application is 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: November 29, 2019

Residential Tenancy Branch