



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETCO PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **DRI OLC PSF MNDCT MNSD**

Introduction

This hearing was re-convened after the issuance of December 10, 2019 interim decision. The previous hearing was adjourned so the tenant could be represented at the hearing by an advocate.

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

1. An order to dispute a rent increase pursuant to section 41;
2. An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
3. An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
4. A monetary order for damages or compensation pursuant to section 67;
5. An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlord attended the hearing and was represented by property manager, PS. The tenant attended the hearing and was assisted by her advocate, LH. The exchange of documents was canvassed at the previous hearing and no further evidence was permitted to be exchanged by my interim order dated December 10, 2019.

Preliminary Issue

A hearing was held before a previous arbitrator who determined that the tenancy would end. The file number of the previous decision is listed on the cover page of this decision. That decision to end the tenancy renders issues #2 and 3 of the tenant's application ineligible for me to determine under Part 5 of the *Act*. As such, I dismissed these issues in accordance with section 62(4) of the *Act*. Likewise, the return of the security deposit (issue #5) was applied for prior to the end of the tenancy. I determined

that this portion of the tenant's application was premature, and I dismissed it with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

should a rent increase by the landlord be upheld or cancelled?

Is the tenant entitled to compensation pursuant to section 67?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant's advocate provided the following submissions. There are 3 pertinent issues to the tenant's claim. First, the landlord or his agent removed the tenant's items from the front porch of the common area for fourteen days, making the tenant lose the enjoyment of the items for this period. The advocate submits that some time during the tenancy, (the date was not provided in testimony), that an apparatus used by the tenant for mobility was removed, hindering the tenant's ability to get around. The tenant describes the apparatus as a medical aid. According to the tenant's advocate, the landlord took it without any notice to the tenant.

Second, the advocate submits that the tenant lost her keys and the landlord would not cut new ones for her for a period of five months. The tenant lost use of common facilities because the landlord demanded \$50.00 for a replacement. The advocate argues that the tenant should have only been required to pay for the cost of replacing the key at a cost of no more than \$10.00 to \$20.00 and charging the tenant anything more is in violation of the *Act*. No specific section of the *Act* was mentioned.

Third, the advocate claims that the tenant has been living in fear and a state of stress since July because the landlord claims their tenancy does not fall under the jurisdiction of the Residential Tenancy Branch. The landlord did actions such as serving her with 3-day notices of eviction and changed her lock causing her to refuse to pay rent or pay rent late. The landlord tried to force her to pay rent in order to get her items back that were improperly taken from the front porch. The advocate stated that the landlord was

holding items captive to get the tenant to pay rent he is duly owed, causing fear and a stressful living condition for the tenant.

The tenant also provided testimony. I found the tenant's testimony to be somewhat confusing, disjointed and difficult to follow however I recorded the following testimony from her. The tenant is traumatized because the landlord says the rental unit is a sleeping room which terrified her. She provided testimony regarding issues of being unable to remember dates or keep track of dates and she denies withholding rent. The landlord steals her things and she's been warned to be careful that there are landlords out there who do that sort of thing. Her argument boils down to the landlord not complying with the *Residential Tenancy Act*. The tenant gave up trying to move, the landlord won the eviction on fraudulent grounds. She struggles as a handicapped person. Regarding her claim for compensation, the tenant stated she doesn't know how I, as the arbitrator can calculate how much she is owed. The landlord does things that have made her lose her enjoyment of the rental unit and he doesn't care.

The landlord provided the following testimony. The porch is common property held by all the tenants. No one is permitted to store their possessions on the porch, with the exception of a single chair. The landlord claims that any items left on the porch is an attractant to undesirable people looking to steal and provides incentive for other tenants to leave their items out. The landlord repeatedly told the tenant to move her items into her unit or get rid of them and the landlord gave her six to eight weeks to remove it. When it wasn't done, the caretaker for the building moved her items offsite which the landlord acknowledges was a mistake. It should have been moved to storage onsite. The 'medical aid' or 'apparatus' the tenant refers to is a baby stroller. Neither he nor the caretaker knew the tenant used it for mobility purposes and the landlord submits that the stroller is not capable of supporting the weight of an adult. When the caretaker was made aware that the tenant needed it for mobility, he immediately returned it to her.

The tenant lost a key that provides access to the outside door, a mail key and the key to her own unit. There are four entrances to the building which use the outside key. If a key is lost, security to the building is compromised. The entire building would require rekeying and each of the nine tenants as well as the landlord and the caretaker would need new keys made. The landlord testified that he advised the tenant it would cost approximately \$500.00 for the job. Eventually, as the risk to the security subsided and no one was caught trying to access the building with the lost key, he agreed to make a new one for the tenant at a cost of \$25.00 which she refused to pay. The tenant started leaving her door open because she didn't have a key, so the landlord gave her a new one since the open door was causing heat to escape.

The landlord went through an arbitration regarding a different tenant and discovered that if they were to occupy one of the units in the building with a single kitchen facility then the Residential Tenancy *Act* may not apply to the building. There was a genuine belief held by the landlord that the sleeping rooms rented out didn't fall under the *Act* and there was no intent to mislead the tenant. Regarding stress and trauma, the landlord testified that he served a notice to end tenancy for unpaid rent, but the tenant paid the rent within the timeframe allowed. There were other arbitrations with this tenant where the tenant was required to pay him filing fees but the tenant refused to pay.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss

In the case before me, I find the tenant has not provided sufficient evidence of a breach of the *Act*, regulations or tenancy agreement by the landlord. First, the landlord acknowledges the baby stroller was removed from the front porch of the common property. I accept the landlord's statement that he was unaware that the baby stroller was utilized by the tenant as a mobility or medical aid. As the primary function of a baby stroller is to push babies, I find the argument to be reasonable. I also accept the landlord's testimony that the stroller was returned to the tenant as soon as he was made aware that the tenant needed it to get around. I find the tenant has failed to establish a

claim for breach of the *Act*, regulations or tenancy agreement committed by the landlord.

Second, the tenant did not advise me which section of the *Act*, regulations or tenancy agreement the landlord violated by not providing her with replacement keys after she lost them. I find the tenant has not provided sufficient evidence to establish her claim for damage or loss. This also applies to the tenant's third claim for stress due to the landlord's confusing her into thinking the tenancy agreement does not fall under the *Residential Tenancy Act*. The tenant has provided insufficient evidence to prove her claim.

Lastly, the tenant acknowledges she has no idea how the arbitrator could possibly determine the value of the compensation she should be entitled to if she were successful in her claim. I find I agree with the tenant's statement. The tenant has not provided any information upon which I should begin to base this determination. I was not referred to any case law where similar determinations were made or provided with any type of scale to review if the tenant were to be successful in establishing her claim. The tenant has not provided sufficient evidence to establish the value of her claim, point 3 of the 4-point test.

For the reasons stated above, I find the tenant has failed to establish a damage or loss from the tenancy and failed to establish the value of her claim. I dismiss the tenant's claim for monetary compensation.

The tenant did not adduce any evidence or provide any testimony regarding her application to dispute a rent increase. This portion of her claim is also dismissed.

Conclusion

The tenant's claim is dismissed.

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: January 22, 2020

Residential Tenancy Branch