



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1161801. BC. Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes **DRI, OLC, FFT, LAT, CNR**

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. KS attended the hearing on his own behalf and as agent for the corporate landlord.

Both parties confirmed that they had received the other's documentary evidence in accordance with the Act.

Preliminary Issue - Amendment

By consent of the parties, I order that KS is removed as a party to this dispute.

Issues to be Decided

Is the tenant entitled to:

- 1) a cancellation of the Notice;
- 2) an order setting aside the notice of rent increase;

- 3) change the rental unit locks;
- 4) an order that the landlord comply with the Act; and
- 5) recover his filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting in July 2007. Monthly rent is \$852 and is payable on the first of each month. The landlord holds a security deposit on \$380 in trust for the tenant.

The tenant alleged that the landlord has engaged in a deliberate campaign of harassment against himself and other tenants of the residential property in an effort to have long-term tenants (who are paying below market rent) move out, so the landlord may re-rent the rental units at a higher rate.

The tenant testified that the landlord would deliberately pretend not to receive his rent cheques, and then accuse the tenant of not paying his rent. As a precaution against this, the tenant adopted the practice of filming himself sliding the rent cheque under the door of the manager's office.

On January 6, 2020, the landlord served the tenant with the Notice, alleging that the tenant did not pay any rent for January 2020. The tenant testified that he paid January 2020 rent and submitted footage of him sliding the January rent cheque under the door of the manager's office at the residential property. He testified that he has paid monthly rent in a similar fashion in prior months, and that the cheques have been cashed by the landlord.

KS denied that the landlord received the January 2020 rent cheque. The tenant testified that the cheque was not cashed.

The tenant testified that the land served him with a notice of rent increase on September 30, 2019. It purported to increase the monthly rent from \$830 to \$852. The tenant argued that this is above the maximum allowable limit for a rent increase of 2.6%. He stated that 2.6% of \$830 is \$21.58, and not \$22.00. The landlord agreed that the notice of rent increase purported to increase the rent \$0.42 over the permitted maximum. KS stated that he thought the tenant was fine with the rent increase, as the tenant did not say anything about it at the time the notice of rent increase was served.

The tenant confirmed that he paid February and March 2020 rent in the amount of \$852.

The tenant also testified that the landlord has caused construction or renovation work to be done at unreasonable times throughout the year, as part of his effort to harass him. He testified that throughout the 2019 BC Day long-weekend, the landlord's workers worked until 11:00pm on Friday evening, and on the Sunday and the Holiday Monday. He testified that this work caused significant noise, in contravention of local noise bylaw 6555 (which the tenant submitted into evidence). KS did not deny this. Bylaw 6555 states:

What are the allowed "hours of construction noise"?

On Private Property

Monday to Friday: 07:30 am to 8:00 pm

Saturday: 10:00 am to 8:00 pm

No construction noise permitted on Sundays and Holidays

The tenant also testified that the landlord or the workers he has hired leave construction supplies and other dangerous items in the hallways of the residential property. He testified that they left ladders in the hallways unattended for a number of days. He testified that they left a plank of wood with four-inch nails sticking straight up in the hallway by the property manager office door. He testified that they left a paint tray unattended in the stairwell for some number of days. KS did not dispute any of this but said that these items were no longer in the hallways.

The tenant argued that all of these items represent unacceptable risks to the occupants of the residential property.

The tenant argued that due to the landlord's non-compliance with the Act and the municipal bylaws, he should be entitled to change the locks on the door of the rental unit as the landlord "is quite likely to enter [the rental unit] without lawful right to do so".

In its written reply, the landlord wrote that it does "not authorize the changing of the locks of the rental unit for emergency purposes". KS did not elaborate on this point during the hearing.

KS' oral submissions were very brief. They amounted to characterizing the tenant as troublesome, and who "calls the city all the time" to complain about the landlord. KS suggested that the tenant felt unsafe in the residential property due to "structural issues" (something, I note, that the tenant did not say in his testimony), and KS suggested that if this were the case that it would be best for both parties if the tenant moved out.

Analysis

1. Rent Increase

The landlord served the tenant a notice of rent increase on September 30, 2019, which purported to increase the monthly rent from \$830 to \$852 effective January 1, 2020. The maximum allowable amount of rent increase in 2019 is 2.6%. A 2.6% increase of \$830 would result in a monthly rent of \$21.58, not \$22.00.

Policy Guideline 37 addresses rent increases:

The Legislation specifies that a rent increase cannot exceed the percentage amount; therefore a landlord should not round up any cents left in calculating the allowable increase. For example, if the base rent is \$800 and the maximum allowable increase is \$36.80, the landlord can issue a Notice of Rent Increase for a new rent of up to \$836.80, but not \$837.

The fact that the tenant paid \$852 in rent for February and March 2020 and that he did not dispute the notice of rent increase at the time he was served with it does not mean that the notice of rent increase is valid. Policy Guideline 37 states:

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.

As such, I find that the notice of rent increase is invalid, and the landlord attempted to raise the monthly rent in an amount exceeded the amount permitted by the Act. As the notice of rent increase is invalid, I find that the amount of monthly rent due remains at \$830, and that any amount the tenant has paid in excess of this amount represents an overpayment of rent. I calculate the overpayment of rent to be \$44 (\$22 x 2 months). I order that the landlord pay the tenant that amount. The monthly rent remains at \$830 until such time as the landlord raises it in accordance with the Act.

2. January 2020 Rent

I accept the tenant's testimony, supported by video evidence, that the tenant provided the landlord with a cheque for January 2020 rent by sliding it under the door of the manager's office. I also accept KS's testimony that the landlord did not receive the cheque. The most reasonable explanation for this is that KS or another agent of the landlord overlooked the cheque on the floor of the manager's office. This is always a risk when items are slide under doorways.

Accordingly, I find that the Notice is invalid, as the tenant provided the landlord with January 2020 rent via a previously accepted method. However, I find that the January 2020 rent remains unpaid. The tenant must pay this amount to landlord. The tenant may deduct \$15 from this payment in consideration for the fee for cancelling the January 2020 rent cheque.

3. Order to Comply with the Act

a. Construction noise

I accept the undisputed evidence of the tenant that the landlord has undertaken construction work inside the residential property which created noise that was disruptive to the tenant. I find that this contravened Noise Control Bylaw 6555.

The Act does not give arbitrators the authority to enforce municipal bylaws. However, such bylaws are a useful guide by which determine the reasonableness of the conduct of a party. Section 28 of the Act states:

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:

[...]

(b) freedom from unreasonable disturbance;

I find that by conducting renovations at 11:00 pm and on Sunday and statutory holidays, the landlord breached section 28 of the Act by causing an unreasonable disturbance and depriving the tenant of his lawful right to quiet enjoyment of the rental unit.

As such, I order that the landlord comply with section 28 of the Act, and refrain from making renovations or repairs causing loud noises inside the residential property on Sundays, statutory holidays, or outside the hours of 7:30 am to 8:00 pm on weekdays, and 10:00 am to 8:00 pm on Saturdays.

b. Hallway storage

I accept the tenant's uncontroverted testimony that the landlord or its agents stored construction tools and materials such as ladders, paint, and lumber in the hallways.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32(1) 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.

I have no evidence before me as to the "health, safety and housing standards required by law". As such, I cannot say if the storage of paint in the stairwell or ladders in the hallway does not comply with health safety or housing standards. However, I find that by leaving lumber with four-inch nails sticking up out of them in the hallway, the landlord

caused the residential property not to be suitable for occupation. The storage of such material in the common areas represents a significant danger to the occupants and should not be permitted.

As such, I order the landlord to comply with section 32 of the Act, and refrain from storing any lumber containing nails in the hallways of the residential property. I make no other determinations as to whether the storage of other materials in the common areas are breaches of section 32 of the Act.

4. Change Locks

Section 70 of the Act states:

Director's orders: landlord's right to enter rental unit

70(1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

(a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

(b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Based on the testimony of the tenant, I do not understand that the landlord's agents have improperly entered the rental unit. I have no evidence before me to suggest that the landlord's agents are likely to enter the rental unit unauthorized. Allegations of harassment and breaches of quiet enjoyment are not sufficient grounds to order that the locks be changed.

As such, I decline to grant this portion of the relief sought by the tenant.

5. Filing Fee

As the tenant has been substantially successful in his application, I order that the landlord reimburse him the filing fee.

Conclusion

In summary, pursuant to sections 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$671, representing the following:

January 2020 Rent	\$830
Filing fee credit	-\$100
Reimbursement for February and March overpayment of rent	-\$44
Credit for cheque cancellation	-\$15
Total	\$671

Pursuant to section 62 of the Act, I order the landlord to comply with sections 28 and 30 of the Act, both generally and as specified above.

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

I order that the notice of rent increase is invalid, and therefore cancelled. Monthly rent shall remain at \$830.

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: March 27, 2020

Residential Tenancy Branch