Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI MNDCT MNRT

Introduction

In this dispute, the tenant seeks to dispute a rent increase pursuant to sections 41 to 43, inclusive, of the *Residential Tenancy Act* (the "Act"). They also seek recovery, by way of compensation, of rent paid as a result of the above-noted rent increases, pursuant to section 67 of the Act. Finally, they seek compensation for the cost of emergency repairs pursuant to sections 33 and 67 of the Act.

The tenant applied for dispute resolution on November 14, 2019 and a dispute resolution hearing was initially held on January 7, 2020 and adjourned to March 9, 2020. The reasons for this adjournment are outlined in my Interim Decision dated January 7, 2020.

There were no issues of service raised by either party or their legal advocates.

Finally, it should be noted that, while I have reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, I have only considered evidence relevant to the issues of this application.

Issues

1. Is the tenant entitled to a finding that a rent increase was in breach of the Act?

2. If yes, is the tenant entitled to compensation resulting from such a breach?

3. Is the tenant entitled to compensation for the cost of emergency repairs?

Background and Evidence

On October 15, 2007, the tenancy began. The rental unit in question is a four-bedroom house. A written tenancy agreement was submitted into evidence, and which indicates that monthly rent at the start of the tenancy was $1,200.00. The tenancy agreement was signed by the parties, including the tenant's son (who was named as a co-tenant on the agreement) on October 1, 2007.

The tenant testified that, at the end of October of 2016, the landlord verbally advised her that the rent would increase to $1,300.00 on January 1, 2017. Not wanting to lose her home, she acquiesced to the rent increase and started paying the increased rent of $1,300.00 on January 1, 2017. At the end of October of 2017, the landlord verbally advised the tenant that rent would increase from $1,300.00 to $1,500.00 on January 1, 2018. Again, not wanting to lose the rental unit, the tenant agreed to the increase and started paying the increased amount on January 1, 2018. No rent increase paperwork, including any notices, were given by the landlord, and there is no documentation of any sort regarding the increases. The tenant seeks $8,700.00, which comprises the difference between the monthly rent of $1,200.00 and the increased rent amounts from January 1, 2017 to January 1, 2020, inclusive.

In addition to the rent compensation claim, the tenant seeks $140.70 for reimbursement for a faucet repair that she made in 2011. The faucet "flew off one day" and water was spraying everywhere. Unable to reach the landlord, the tenant went to the store and purchased a new faucet, which cost $140.70. A receipt for this was submitted.

Finally, the tenant seeks $55.55 as reimbursement for a faulty relay switch that she had to replace on the heater. The landlord had allegedly changed his phone number, so the tenant was unable to reach him and had to repair the switch herself. This repair also occurred in 2011.

The landlord's legal advocate submitted that the landlord concedes that the first rent increase in 2017 did not meet the requirements under the Act. However, the second rent increase occurred after the parties agreed – by verbal consent – to increase the rent as a result of additional occupants living in the rental unit. Landlord's legal advocate submitted that as a result of verbal discussions between the parties, the tenancy agreement effectively came to an end, and that a new tenancy (which now fixed rent at $1,500.00) came into being on January 1, 2018. As argued by the advocate, a tenancy agreement can be oral as well as written.

The landlord testified that he discovered two additional occupants in the rental unit, and that he met with the tenant who “agreed to pay more rent to help pay for the house and the maintenance.”

Regarding the two repair claims, the landlord’s position is that this is the first time he was made aware of them, and the first time he has even seen receipts for the repairs. He received no notice from the tenant about the repairs. The landlord’s advocate submitted that “it is not obvious from the tenant’s evidence that it was an emergency repair,” and, that there is insufficient evidence to establish what, exactly, lead to the repairs or the nature of the repairs.

In her rebuttal, the tenant testified that, in response to a direct examination by her advocate, when she moved into the rental unit the landlord was fully aware that there would be people living with her. After all, she was a single woman and the rental unit is a four-bedroom house. However, there was at no time additional people beyond family residing in the house. The tenant testified that she never sublet the property and confirmed that there was no notice of any rent increase, and, that the rent increase was above the proscribed limits set out in law.

In his rebuttal, the landlord testified that it was his understanding that nobody would be living in the house, except for the tenant’s brother (who was named on the tenancy agreement).

Analysis

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.

The Rent Increase

Sections 40 through 43 of the Act outline the process by which rent may be increased.

Section 40 permits rent increase where a tenancy agreement contains a term which allows a landlord to increase rent where there are additional occupants. There is no such term in the tenancy agreement in this case. Section 41 simply states that a landlord must not increase rent except in accordance with these sections of the Act.

Section 42 of the Act states as follows:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the Act states as follows:

43 (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.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this dispute, the landlord concedes that no notices of the two rent increases were ever issued, and that there is no paperwork of any kind on this matter. However, it is the landlord's position that the parties verbally agreed to the rent increase on the understanding that such an increase would reflect additional occupants living in the rental unit. But section 41(3)(c) is quite clear: an increase above the amount permitted by the regulations requires that the tenant agrees in writing. No such written agreement occurred.

Alternatively, the landlord's legal advocate argued that a new tenancy agreement took effect on the date that the parties agreed to the increased rent on January 1, 2018. In addition, the landlord seeks a declaration, or finding, that the tenant was in breach of the tenancy agreement by having additional occupants.

The tenant disputes that this occurred and opposes that any such finding be made. It is further the tenant's position that she does not have additional occupants, which would not bring the tenancy agreement into a fundamental breach.

Section 44(1) of the Act lists numerous means by which a tenancy may be brought to end. I find that, despite whatever agreement may have occurred verbally between the parties in the Fall of 2017, none of the means listed in section 44(1) took place. There was no written, mutual agreement to end the tenancy and start a new one. I find that the tenancy that is currently in place is the same tenancy that came into existence in 2007.

There was much made in this dispute about additional occupants living in the rental unit. However, I find that whether the tenant was permitted to have additional occupants or not is irrelevant. There is no prohibition or clause in the tenancy agreement preventing the tenant from having occupants, be they family members or roommates. And, while a landlord may serve notice to end a tenancy when a tenant has an unreasonable number of occupants in the rental unit (see section 47(1)(c) of the Act), the landlord never served any such notice, and there is no argument being made that this is the case.

In summary, I find that the facts do not support the argument that the parties entered into a new tenancy agreement in 2018. Simply because the tenant agreed verbally to pay more rent does not result in there being a new tenancy agreement. Indeed, the tenant's explanation that she simply agreed to the increase in order to not lose her home is reasonable one, especially given the less-than-market rent amount on this rental unit.

I further find that the landlord did not provide proper notice of the second rent increase and is thus in breach of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim that the rent increases were in breach of the Act. Further, pursuant to section 43(5) of the Act, I find, and order, that the tenant is entitled to recover $8,700.00 in the unlawful rent increase. A monetary order is issued in conjunction with this Decision reflecting the amount awarded.

I further find, and order, that the monthly rent is $1,200.00 and shall remain so unless and until the landlord increases the rent in accordance with Part 3 of the Act.

The Emergency Repairs Claim

Section 33 of the Act covers emergency repairs, what they mean, and how parties are to deal with them:

> (1) In this section, "emergency repairs" means repairs that are
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> > (a) urgent,
> >
> > (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
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> > (c) made for the purpose of repairing
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> > > (i) major leaks in pipes or the roof,
> > > (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> > > (iii) the primary heating system,
> > > (iv) damaged or defective locks that give access to a rental unit,
> > > (v) the electrical systems, or
> > > (vi) in prescribed circumstances, a rental unit or residential property.
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> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

> (3) A tenant may have emergency repairs made only when all of the following conditions are met:
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> > (a) emergency repairs are needed;
> >
> > (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
> >
> > (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In this dispute, there is no evidence that the tenant made at least two attempts to telephone the landlord, as is required by section 33(3)(b) of the Act. While the tenant testified that the landlord changed his phone number, I see no evidence to support this, and I find it difficult to accept that the tenant made no other attempts to advise the landlord about both the faucet and the relay switch. Nor is there any evidence that the tenant complied with section 33(5) of the Act, which states:

> A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
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> (a) claims reimbursement for those amounts from the landlord, and
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> (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The landlord testified that this is the first time he has heard of the claims, and the tenant provided no evidence to prove that she gave the landlord a written account of the repairs and the amounts they cost her. It is, I find, rather disingenuous of the tenant to bring these claims to the landlord's attention more than 8 years after they occurred, and it calls into question the full circumstances behind each repair. There is, I conclude, insufficient evidence for me to find that the landlord breached the Act and that the tenant is entitled to compensation for any such breach for emergency repairs.

I thus find on a balance of probabilities that the tenant has not met the onus of proving their claim for compensation for the cost of emergency repairs. This aspect of her claim is dismissed without leave to reapply.

Conclusion

I grant the tenant a monetary order in the amount of $8,700.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

The tenant's claims for compensation for emergency repairs are 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 Act.

Dated: March 9, 2020

Residential Tenancy Branch