Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LRE, LAT, AS, OLC, RP, FFT

Introduction

The tenant seeks the following relief under the *Residential Tenancy Act* (the "Act"):

1. an order to reduce rent for repairs, services, or facilities agreed to in the tenancy agreement but not provided, under section 65 of the Act;
2. an order suspending or restricting the landlord's right to enter the rental unit, under section 70 of the Act;
3. an order authorizing the tenant to change the lock(s), under sections 31 and 70 of the Act;
4. an order allowing assignment or sublet, pursuant to section 65 of the Act;
5. an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act;
6. an order for the landlord to make regular repairs, under sections 32 and 62 of the Act; and,
7. recovery of the filing fee, under section 72 of the Act.

The tenant applied for dispute resolution on May 2, 2020 and a dispute resolution hearing was held, by way of telephone conference, on June 8, 2020. The tenant, the landlord, and an assistant/interpreter for the landlord, attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of evidence.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony has been included in this Decision.

Issues to be Decided

Is the tenant entitled to:

1. an order to reduce rent for repairs, services, or facilities agreed to in the tenancy agreement but not provided, under section 65 of the Act,
2. an order suspending or restricting the landlord's right to enter the rental unit, under section 70 of the Act,
3. an order authorizing the tenant to change the lock(s), under sections 31 and 70 of the Act,
4. an order allowing assignment or sublet, pursuant to section 65 of the Act,
5. an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act, or
6. an order for the landlord to make regular repairs, under sections 32 and 62 of the Act, and,
7. recovery of the filing fee, under section 72 of the Act?

Background and Evidence

The tenant testified that the tenancy began on March 1, 2020. Monthly rent is $2,650.00. A copy of the written tenancy agreement was submitted into evidence, and which shows the tenancy to have technically begun on February 23, 2020 and which is a fixed term tenancy ending on February 28, 2022. The tenancy agreement indicates that water is included in the rent, but that electricity is not.

Electricity, and the cost thereof, is a predominant problem for the tenant. The electrical cost for what he argues is an insufficient hot water tank is an issue for which he was not prepared when he entered the tenancy. The rental unit is two-bedroom apartment, but the hot water tank is, according to the tenant, insufficient to support an apartment of this size with a potential use by four people. (The tenant did not indicate how many people ordinarily reside in the rental unit.) He brought this issue to the landlord's attention.

A plumber came three times, and the old hot water tank was replaced with a new tank. The plumber remarked that it is "technically pointless" to try anything else: there is no solution because the rental unit can only accommodate this size of tank. The building is old and "there is limited space for a bigger tank." However, the tenant argued that the landlord never brought this to the tenant's attention when the tenant was first considering accepting the tenancy.

Another issue that the tenant spoke of was the landlord's unannounced visit to the rental unit on April 16. There was "no notice" and "no explanation for the visit"; the tenant said that the landlord tried to force their way into the rental unit.

The tenant testified that there were "other problems," though he did not elaborate. But, he pointed out that the landlord simply "doesn't want to deal with the other issues."

Finally, the tenant said that the landlord had initially accepted that he (the tenant) could sublet the rental unit in order to pay for rent, but in the end the landlord did not put this agreement in writing. The tenant was worried that the landlord might change their mind, and thus he seeks permission to sublet.

In their testimony, the landlord explained that the reason for their visit on April 16 was because they had tried contacting the tenant but, not hearing back, they were extremely worried and wanted to check on him. The landlord testified that they did not try to enter the rental unit with a key, but rather, banged on the door for three minutes. Both parties referred to a video of the incident; the video was submitted into evidence.

The video, which lasts 27 seconds, depicts the tenant wearing a bathrobe opening the front door, but trying to keep it from opening too much. He converses with the landlord and her husband, both of whom are wearing masks. The tenant tells the landlord that they need to give him 24 hours' notice before coming and refers to the landlord contacting him the previous night at 10 PM. The tenant tells the landlord and the other individual to back up, after which he closes the door. After the camera (held by an unidentified individual inside the rental unit) approaches the landlord and the male, the landlord proceeds to hold up her iPhone and presumably film or take a picture in the remaining 6 seconds of the video.

In his rebuttal, the tenant testified that there was no contact between the landlord and him prior to the landlord showing up on April 16.

Regarding the hot water tank issue, the landlord testified that they replaced an old tank for a new one, and that there is nothing wrong with the new tank. "It is what it is," and all suites in the building have the same, or an equivalent, tank. Moreover, the landlord's assistant stated that the tenant "had his chance to look [at the tank] when he first viewed the rental unit.

As for the request by the tenant to sublet, the landlord said that they "temporarily allowed him to have a roommate" to help out with the rent. (Which, they added, has not

been paid for May or June.) The tenant responded that he has paid rent, and both parties briefly discussed some issue with the tenant's obtaining rent relief from the government.

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.

1. Order to reduce rent for repairs/services/facilities agreed to in tenancy agreement but not provided

Quite simply, the landlord is not responsible for electricity under the tenancy agreement: the tenancy agreement is clear on this point. Therefore, the landlord cannot be held liable for any such electricity costs borne by the tenant. A hot water tank, and now a new hot water tank, is included in the rental unit. There is no evidence that the hot water tank does not work. The technician said that it works as it should. Further, both parties agreed that the hot water tank is the same type of tank in all of the suites in the building. The tenant had an opportunity to see what type of tank it was in the rental unit when he first viewed the rental unit, and the landlord cannot be held responsible for the tenant's costs related to the use of an otherwise perfectly good hot water tank.

Taking into consideration all the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for an order under section 65 of the Act. Therefore, this aspect of this application is dismissed without leave to reapply.

2. Order suspending/restricting landlord's right to enter rental unit

Section 29(1) ("Landlord's right to enter rental unit restricted") of the Act states:

> 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.

In this case, however, what is missing is any evidence of the landlord actually entering the rental unit. True, the landlord attended to the rental unit without notice (apparently out of concern for the tenant's well-being), but the video and the oral evidence depicts the landlord's visitation at the rental unit without ever entering.

That having been said, I find it improper for the landlord to show up unannounced and then proceed to bang on the door for three minutes. A tenant is entitled to a certain level of privacy, which in this case was infringed upon. Moreover, the landlord's video or photographing that occurred within the last few seconds of the video is unacceptable.

Section 70(1) of the Act states that an arbitrator "by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [of the Act]."

Given the inappropriate and privacy-invasive nature of the landlord's April 16th visit to the rental unit, I hereby order that the landlord must comply with section 29 of the Act. Moreover, the landlord must not attend to the rental unit (whether or not she intends to enter the rental unit) without (1) first notifying the tenant that she intends to visit, no less than a full 24 hours before her intended visit, and (2) receiving the tenant's approval of her visit. This, however, does not apply to any situation where section 29(1)(f) exists.

3. Order authorizing tenant to change locks

Section 70(2) of the Act states that

> 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.

There is no evidence that the landlord is likely to enter the rental unit other than as authorized under section 29 of the Act. That the landlord attended to the rental unit, but did not actually enter the rental unit, is not proof of her intention to enter the rental unit. As such, I am not satisfied that the landlord is likely to enter in violation of section 29 of the Act and thus I decline to issue an order under this section of the Act.

4. Order allowing assignment or sublet

Section 65(1)(g) of the Act states that an arbitrator may make an order

> that a tenancy agreement may be assigned or a rental unit may be sublet if the landlord's consent has been unreasonably withheld contrary to section 34 (2)

Section 34(1) and (2) of the Act states that

> (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
> (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

In this dispute, there is no evidence that the landlord actually withheld their permission for the tenant to sublet. The landlord apparently accepted the tenant’s request to do this, but according to the tenant “at the end, they didn’t.” The landlord testified that they allowed the tenant to have a roommate. While the facts remain rather unclear regarding

this issue, I hereby order that the landlord must not unreasonably withhold their consent for the tenant to assign the tenancy agreement or sublet the rental unit.

5. Order that landlord comply with Act, regulations, or tenancy agreement

There is insufficient evidence for me to conclude than an order under section 62(3) of the Act is warranted. However, the above-noted orders shall remain in effect.

6. Order for landlord to make regular repairs

There is insufficient evidence for me to make an order under sections 32 and 62 of the Act. Thus, this aspect of the tenant's application is dismissed without leave to reapply.

7. Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful on certain aspects of his application, I grant his claim for reimbursement of the filing fee in the amount of $100.00. In full satisfaction of this award the tenant is hereby authorized to deduct $100.00 from the rent for July 2020.

Conclusion

The tenant's application is dismissed, in part, and is granted, in part.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 8, 2020

Residential Tenancy Branch