



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, LAT, OLC, DRI, MNDCT, FFT**

Introduction

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

- An order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 70;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Dispute of a rent increase pursuant to section 43;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials and based on the testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files in a variety of formats instead of a single pdf file with numbered pages, making it difficult to open and read the evidence. The file names are inconsistent and uploaded non-sequentially so that locating individual pieces of evidence is time-consuming. While I have not excluded any of the documentary

evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Should the landlord's right to enter the rental unit be subject to restrictions? Should the tenant be authorized to change the locks to the rental unit? Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord's notice of rent increase be set aside? Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began on April 20, 2019. The monthly rent is \$2,100.00 payable on the first of each month. The rental unit is a duplex building and fenced yard with the landlord residing next door. The tenant testified that there is no written tenancy agreement.

The tenant submits that the landlord has come into the yard of their rental unit on a number of occasions to have interactions with the tenant and their guests. The landlord confirms that they have entered the yard on a few occasions to reprimand the tenant and their guests for smoking on the property. The tenant seeks an order that the landlord comply and to refrain from entering the rental unit, harassing the tenant and guests and to change the locks to the gate in the fencing to ensure privacy.

The tenant describes their relationship with the landlord as having deteriorated over the last months. The tenant describes the landlord's behaviour as harassment and says they believe that the landlord has harassed them, intimidated them, threatened eviction, extorted money and has acted in "bad faith". The tenant submits that the landlord offered the tenant a discounted monthly rent for May and June, 2020 but the offer was promptly rescinded by the landlord. The tenant submits that thereafter the landlord made demand for the full amount of the monthly rent despite the tenant's limited means. The tenant submits that they believe the landlord has engaged in a series of aggressive assaults as part of a campaign to oust the tenant and sell the rental property. The tenant says that the landlord has threatened eviction and has made demand of unpaid rent which the tenant believes to be extortion.

The tenant characterizes the landlord's behaviour as demonstrating "malice and a complete disregard for the effects of her actions on [the tenant's] household". The tenant believes that the landlord's actions constitute bad faith and submits that they have experienced extreme suffering due to harassment and seeks an award of aggravated damages.

The tenant submitted into evidence copies of various correspondence between the parties as evidence of their adversarial relationship and in support of their monetary claim.

The tenant submits that while they were paying the utilities for the rental property they believe the landlord ought to have only been charging them half of the utility bills and therefore they are entitled to a retroactive reduction of the utilities charged to date.

The tenant seeks a monetary award in the amount of \$29,780.16 consisting of claims for loss of quiet enjoyment of the rental suite, loss of privacy, noise complaints, bad faith, aggravated damages and an overpayment of utilities.

The landlord issued a Notice of Rent Increase dated July 28, 2020 with an effective date of November 1, 2020. The amount of the rent increase has been calculated in accordance with the allowable rent increase amount set out in the regulations. The landlord said that while the notice provides an effective date of November 1, 2020, they acknowledge that pursuant to the current state of emergency and Ministerial Order No. M089 that rent increases will not take effect during the period that the Order is in place.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities. In the present case, while the parties agree on some of the underlying facts, they greatly differ in their characterization of their interactions.

I accept that there have been some instances where the landlord has entered the yard of the tenant without prior authorization or notice. While I accept that these incursions can be bothersome, based on the evidence I find that there have only been a few instances occurring throughout the tenancy, when the tenant or persons permitted on the property by the tenant have been in attendance. I accept the evidence of the parties that the instances where the landlord has entered the rental property has been limited to coming onto the yard and they have never entered or attempted to enter the rental

building. Under the circumstances I do not find that there is sufficient evidence that the landlord's ingress has been so frequent or unreasonable that it warrants an order. I dismiss the portions of the application seeking authorization to change the locks, seeking an order to limit the landlord's right to enter the rental unit and seeking an order of compliance. The parties are reminded to abide by the terms of the Act pertaining to the right to enter rental premises.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that in the absence of a written tenancy agreement between the parties or some documentary evidence showing that there is an agreement between them as to the amount of utilities the tenant is obligated to pay, there is insufficient evidence in support of this portion of the tenant's monetary claim. I find that the tenant's submission that they are entitled to reimbursement is insufficiently supported in the materials and the portions of the correspondence do not demonstrate any agreement between the parties.

The tenant submits that they are the hapless victim of a capricious and malicious landlord who subverts the Act, regulation and tenancy agreement at every opportunity in a calculated and high-handed manner worthy of reproach. The landlord says that they have acted reasonably and professionally under difficult circumstances upon the advice of the Branch and that they bear no ill will towards the tenant. I find that the documentary evidence, including the ongoing correspondence between the parties, does not fully support either view.

While I accept that the relationship of the parties has deteriorated into one of adversarial animosity, I find insufficient evidence that the behaviour of the parties is such that it gives rise to a monetary award. I find that the correspondence shows two parties who are unable to agree on many terms of the ongoing tenancy. I do not find that disagreement between the parties to be sufficient to find that there has been a breach of any portion of the Act, regulations or tenancy agreement such that a monetary award is applicable. I do not find the tenant's submission that the communications by the landlord were threats, intimidation or extortion to be a reasonable interpretation. I

further find that the tenant's belief that the nature and tone of these communications to give rise to a monetary award in the amount of 12 times the monthly rent to be wholly out of proportion with reason.

I find that the tenant's submissions primarily consist of subjective complaints, assertions without documentary support and claims that are stridently disputed by the landlord. I find little evidence that there has been any breach on the part of the landlord such that it gives rise to a monetary award. The documentary evidence does not support the tenant's interpretation that there was an agreement between the parties allowing for non-payment or discount on the monthly rent and the landlord's correspondence unequivocally asserts their right to full payment under the tenancy agreement.

While the tenant may not have appreciated the tone of the correspondence from the landlord I do not find that the content and context to be such that it could reasonably be considered harassment. Similarly, I find little evidence in support of the tenant's various complaints about their right to quiet enjoyment being affected. A breach means a substantial interference with the ordinary and lawful enjoyment of the premises. While I accept that there have been some instances where the landlord has entered the tenant's yard and had some hostile interactions, I do not find the evidence of these instances to be so frequent and ongoing that it may for the basis for a claim.

I find that the tenant has not met their evidentiary onus on a balance of probabilities to establish that there has been any breach on the part of the landlord such that it gives rise to a claim for a monetary award. Consequently, I dismiss this portion of the tenant's application.

The Notice of Rent Increase dated July 28, 2020 is in the prescribed form and calculates an amount of rent increase in accordance with the regulations. I accept the evidence of the parties that no previous rent increase was issued in the previous 12 months. As such, I find that the rent increase complies with the *Act* and pursuant to section 43(2) a tenant may not dispute such a rent increase. Accordingly, I dismiss this portion of the tenant's application.

I note that, pursuant to Ministerial Order M089 a rent increase issued in accordance with the *Act* during the effective date of the Order does not take effect during the period of the Order. Accordingly, as the landlord conceded, while the Notice of Rent Increase provides an effective date of November 1, 2020, if Order M089 remains effective on that date the rent increase only comes into effect upon the expiration of the Order.

As the tenant was not successful in their application, they are not entitled to recover their filing fees.

Conclusion

The tenant's application is dismissed in its entirety 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: September 10, 2020

Residential Tenancy Branch