



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Acadian Canada's Best Value Inn & Suites and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, LRE, OLC, DRI, MNDCT

Introduction

On August 19, 2021, the Tenant, via an advocate on their behalf, applied to dispute a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). They also applied for the Landlord’s compliance with the legislation and/or the tenancy agreement, and suspensions/conditions on the Landlord’s right to enter the rental unit.

The Tenant made another Application on August 20, 2021, with the grounds of Landlord entry, and their compliance. These two grounds are repeated from the prior Application.

On December 10, 2021, they amended this second Application to dispute a separate 10-Day Notice to End Tenancy for Unpaid Rent issued on December 14, 2021. They also added the dispute of a rent increase, and a claim for compensation.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 23, 2021. Both parties attended the conference call hearing. The advocate who filed the two Applications and the amendment did not attend; instead, another representative attended in their place. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary matter – evidence disclosure

At the outset of the hearing, the Landlord confirmed they received notice of this hearing, provided by the Tenant for each of their Applications and the amendment as listed above.

Though the Landlord provided written statements to the Residential Tenancy Branch, they did so one day prior to the scheduled hearing date and did not disclose that to the Tenant in a timely manner. For this reason, I give these individual pieces no consideration.

I informed all parties at the outset of the hearing that their statements were evidence in this matter, and all issues were raised for either party's testimony. No party was prejudiced by non-disclosure of evidence.

Preliminary Matter - jurisdiction

On the Application and in a written submission dated December 9, 2021, the advocate who made the Application on the Tenant's behalf raised the issue of jurisdiction. They raised this issue by asking for the Landlord's compliance with the legislation and/or the tenancy agreement.

The Tenant here resides at a residential hotel since approximately November 2020. A verbal agreement was in place, with the Tenant paying \$1,350 monthly for exclusive possession of the rental unit. The unit is self-contained with its own bathroom and kitchen area, with no housekeeping services.

The advocate submits this rental from the Landlord is a tenancy, and the *Act* applies. In the hearing I reviewed this advocate's submission with the parties present. The advocate who prepared this submission was not present. The parties present agreed this was not a situation used for vacation or travel purposes.

On these submissions, and with the parties' agreement on the matter of tenancy, I find the *Act* applies, and the exclusion of s. 4(e) of the *Act* (living accommodation as vacation or travel accommodation) is not applicable in this situation. Having established jurisdiction, the hearing proceeded on the issues indicated on the Tenant's Application.

Preliminary Matter – notices to end tenancy

Neither party provided a copy of the 10-Day Notice at issue in this hearing. The Tenant, via their advocate, indicated on their Application that they received this document on August 9, 2021. The Landlord provided the dollar amount owing by the Tenant as of the date they issued that 10-Day Notice, the equivalent of two months' amount of rent.

Because it was not provided as evidence for this hearing, the Tenant's representative in the hearing submitted there was no way to verify such a 10-Day Notice exists.

In this matter, the onus is on the Landlord to prove they have a valid reason to end the tenancy. The Landlord spoke to the reasons of non-payment of rent in the hearing; however, there is no evidence to show the 10-Day Notice is valid and compliant with the important provisions of s. 52 of the *Act*, those governing its form and content requirements. Indeed, there is no proof even of the date the Landlord issued or served that document.

Any notice issued by the Landlord in August 2021 is of no force and effect. This tenancy is not ending for that reason.

In their December 9, 2021 Application amendment, the Tenant noted a separate 10-Day Notice, though no date was provided in the amendment document. In the hearing, the parties present confirmed there was no separate 10-Day Notice. The Landlord confirmed they did not issue a 10-Day Notice in December. For this reason, I dismiss the separate, second ground indicated by the Tenant on their amendment.

Preliminary Matter – dispute of rent increase

In the hearing, the Tenant's representative stated they were disputing any rent increase that was above the allowed rent increase rate of 1.5%. The Landlord confirmed they did not make a demand for rent increase. The Tenant in the hearing confirmed they did not receive a notice from the Landlord about a rent increase.

With no evidence of a rent increase imposed by the Landlord, and no confirmation from the Tenant, I dismiss this piece of their Application, without leave to reapply.

Issues to be Decided

Is a suspension or restriction of the Landlord's right to enter the rental unit warranted in the circumstances, pursuant to s. 70 of the *Act*?

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Background and Evidence

The Tenant, on their own and via their representative and support in the hearing, felt that someone was accessing their rental unit when they were not present. They were not made aware of that access, and no notice was provided to them of any visit. The Tenant's representative noted that the Landlord had failed on repairs to the locks on the rental unit and was "generally surveilling and confronting [the Tenant] about guests." The Tenant did not provide specifics or refer to dates or times of incidents where they felt there was entry into their unit by others without their consent.

The Tenant's advocate, in their written submission of December 9, described how "the landlord has, from time to time entered [the Tenant's] unit without notice." Further, the Tenant "for a number of weeks or months" did not have free access because the Landlord changed or failed to repair the electronic lock.

The Landlord noted that the fire department issued a notice about this unit being a fire hazard. In response to this, the Landlord knocked on the Tenant's door a few times and the Tenant answered the door in response to that. The Landlord stated there was no entry without the Tenant's notice or permission. The condition of the rental unit is an ongoing concern, and the Landlord shared that the fire department was aware of this hearing and intending to follow up due to their serious concern with the state of the rental unit.

The Tenant amended their Application in December, requesting compensation for monetary loss or other money owed. This amounts to \$4,050, which is one-half the amount of rent paid for the months of July through to December 2021. In the written submission, the Tenant's advocate provided this is "for loss of peace and quiet enjoyment in the amount of 50% of [their] rent, monthly, since July 2021."

In their hearing, the Tenant's representative referred to the issuance of the notice to end the tenancy in August, and the repeated instances of the Landlord knocking or entering the rental unit. The Tenant submitted the Landlord "doesn't seem to understand that there's a way to do things and 24-hour notice". The Tenant described how they were denied a ground-floor rental unit despite their request at the start of the tenancy, and they have accessibility issues now on the second floor.

The Landlord described how there is no availability for other rental units, especially in the situation of hotel/motel rental units. They described there are no access issues

when using a back entrance to the parking area which has about 3 steps to it. The Landlord plead the simple fact that the Tenant is still behind on rent.

Analysis

The Act s. 29 restricts the Landlord's right to enter a rental unit. There are conditions listed. From the evidence and testimony presented, I am not satisfied the Landlord made an unauthorized entry into the Tenant's unit. The Tenant provided that they are home a great deal of the time due to their mobility limitations. The Tenant was not able to provide any specific details of when the unauthorized entry occurred. Additionally, there was no specific information given on the Landlord changing or not repairing the electronic lock system used on the unit.

From this, I am not satisfied there was unauthorized entry such that a restriction or suspension is required. I dismiss this portion of the Tenant's Application and no such specific order follows. I find there are no extra restrictions warranted, and the Landlord is permitted to knock on the Tenant's door as needed for the purposes of communicating on important safety concerns that appear to be ongoing.

I note for the Tenant's information that monthly inspections are permitted with proper notification to the Tenant or the Tenant's permission for that. Other entries as needed are permitted with proper notice or the Tenant's permission, as per s. 29. This would of course include the purposes for which the fire department has raised their concern regarding the state of the rental unit.

There was no specific evidence or testimony about the Landlord changing locks or restricting the Tenant's access to the rental unit. As such, I find there is no specific order warranted via s. 30 where there has been no infringement on the Tenant's right of access.

Regarding the Tenant's claim for one-half rent amount compensation for the past six months, I note the timeframe submitted precedes any service of a notice to end tenancy. Other than that, there are no specific examples and insufficient evidence of the Tenant's right to quiet enjoyment being infringed upon by the Landlord here. Without any evidence to demonstrate any difficulty, I find the Tenant's unit being on the second floor does not equate to a loss of quiet enjoyment.

Given the vagueness of the claim here, and lack of specific information on incidents involving the Tenant's own quiet enjoyment, I find there are no full particulars in place for this part of the Tenant's claim. This is necessary for any application for dispute resolution, as per s. 59(2)(c). Because of this, I dismiss this portion of the Tenant's Application without leave to reapply, and there is no award for monetary compensation.

Conclusion

For the reasons above, I dismiss the Tenant's Applications in their entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 24, 2021

Residential Tenancy Branch