Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: DRI, RR, RP, PSF, LRE, AS, OLC, FFT

Introduction

The Tenant seeks various relief under the *Residential Tenancy Act* (the "Act").

Issues

The issues in this dispute are:

1. Is the Tenant entitled to dispute a rent increase?
2. Is the Tenant entitled to a rent reduction?
3. Is the Tenant entitled to an order for repairs?
4. Is the Tenant entitled to an order for services or facilities?
5. Is the Tenant entitled to an order restricting the Landlord's right to enter the rental unit?
6. Is the Tenant entitled to assign their tenancy agreement?
7. Is the Tenant entitled to an order requiring Landlord compliance with the Act, the regulations, or the tenancy agreement?
8. Is the Tenant entitled to recover the cost of the application fee?

Evidence and Analysis

In this type of administrative proceeding, the applicant must prove their claim on a balance of probabilities (meaning "it is more likely than not to be true"). I have carefully reviewed the parties' submissions and have weighed the evidence, but only refer to the relevant information necessary to explain my decision.

The tenancy began on December 15, 2020. Monthly rent is currently $3,700. The Tenant paid a security deposit and there is a written tenancy agreement in place. Both parties submitted various documentary evidence, which I have reviewed and considered.

Is the Tenant entitled to dispute a rent increase?

A Landlord may increase rent if in compliance with Part 3 of the Act. One method is where a rent increase is "agreed to by the tenant in writing" (section 43(1)(c) of the Act).

In this dispute, the Tenant agreed to the increase from $3,700.00 to $3,755.50 by way of a second written tenancy agreement. There is no evidence before me to find that the Tenant signed the tenancy agreement under coercion.

As such, it is my finding that rent is in the amount of $3,755.50 and it is due on the fifteenth of the month. Thus, the Tenant is not entitled to any order or finding that the rent increase breached the Act.

Is the Tenant entitled to a rent reduction?

The Tenant seeks compensation in the form of a retroactive rent reduction under section 65(1)(f) of the Act. They seek this reduction because, despite paying $3,700 and $3,755.50 in rent for exclusive possession of the rental unit (as is required under section 28(c) of the Act), the Landlord has stored various old and useless furniture throughout the property.

The Tenant testified under oath that, while the rental unit was rented as "furnished," much of the furniture were remnants of an estate sale. The furniture includes a heavy chair elevator for which the Tenant and their family have no use. The Tenant testified that they asked the Landlord to remove the various detritus, but to no avail. The Tenant submits that the amount of floor coverage on which the Landlord stores this furniture amounts to 15%. This is the percentage that the Tenant seeks in a retroactive rent reduction.

The Landlord's property manager testified under oath that the tenancy agreement indicates that "furniture" is included in the rent. They also argued that it is unreasonable that only now, after two years, that the Tenant raises an issue with all of the extra furniture.

Based on the evidence before me, I disagree with the property manager's assertion that all of the Landlord's various furniture can be considered to be included in the rent as if the rental unit were fully furnished. The property manager did not dispute that the various furniture takes up 15% of the floor area. However, I am not persuaded that the Tenant has proven that it takes up 15%. Nor am I persuaded that the Tenant took reasonable steps to address the furniture being stored from the very start of the tenancy.

As such, I am not inclined to grant an order reducing rent either retroactively or going forward. This claim for relief is therefore dismissed.

However, the Tenant is entitled to exclusive possession of the rental unit. As such, the Landlord is ordered to remove all furniture not belonging to the Tenant and all furniture not actually being used by the Tenants. It is the Tenant's responsibility to designate which furniture needs to be removed. And the Landlord is required to remove the designated furniture from the rental unit within 30 days of the date of this Decision.

If the Landlord fails to remove the furniture as outlined above, the Tenant may file a new application for dispute resolution and seek a future reduction in rent.

Is the Tenant entitled to an order for repairs?

While I appreciate that having an electrical panel that emits smoke or sparks is less than desirable, and while I empathize with the Tenant's concerns about having a "qualified" repairperson attend to repairs, it is outside the authority of the Act to require that a Landlord use a specific type of repairperson do repairs.

In other words, if a tenant asks a landlord to carry out repairs, the landlord may make those repairs in any manner they see appropriate. Thus, based on the evidence and the Tenant's submissions before me, I decline to grant any order for repairs encompassing a qualifications or certification requirement for future repairpersons.

I will simply leave this issue by citing section 32(1) of the Act:

> 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.

It is therefore within a landlord's best interests to ensure that any repairs made to a rental unit do not contravene this section of the Act.

Is the Tenant entitled to an order for services or facilities?

A refrigerator is included in the rent. The Tenant testified that the Landlord replaced two broken refrigerators at the start of the tenancy with two more broken refrigerators. One of those fridges had a broken handle so the Tenant replaced it. The door of the other fridge does not close completely.

When a Landlord includes a service or facility as part of the rent it is presumed that the service or facility actually works or fulfills the function of that service or facility. Where a service or facility is not provided as expected, it may be found that the Landlord has terminated or restricted a service or facility. This is prohibited under section 27(1) of the Act. And, it is the case that the provision of the refrigerator is "essential to the tenant's use of the rental unit as living accommodation" (section 27(1)(a) of the Act).

A refrigerator with a door that cannot be completely shut or closed breaches the Landlord's obligations under the tenancy agreement and the Act. And it is not lost on me that the Tenant is likely incurring higher electrical costs due to a non-sealed refrigerator.

Given these findings, I order the Landlord to repair the refrigerator with the non-closing door within 15 days of receiving this Decision. Alternatively, the Landlord must replace the existing non-closing door refrigerator with a new, fully working refrigerator within 15 days of receiving this Decision. Should neither occur then the Tenant may file a new application for dispute resolution seeking compensation or a reduction in rent.

Is the Tenant entitled to an order restricting the Landlord's right to enter the rental unit?

The Tenant testified that the Landlord shows up at the property unannounced. The Tenant seeks an order requiring that the Landlord provide written notice or written consent before attending to the property.

Section 29 of the Act outlines how and when a landlord can enter a rental unit. There is, however, nothing in this section that prohibits a landlord from attending to the rental unit. For example, if a landlord wanted to attend in-person unannounced, they could do so. Whether the tenant consents to the landlord's entry *into* the rental unit, however, is subject to section 29(1)(a) of the Act. A landlord may enter a rental unit without a tenant's permission, but the landlord must provide written notice under section 29(1)(b).

There is insufficient evidence for me to find that the Landlord has illegally entered the rental unit. While it may be bothersome to the Tenant that the Landlord shows up unannounced, it is with the Landlord's right to do so. (Whether the Landlord actually enters the rental unit is subject to the conditions set out in section 29.)

Given the evidence before me I decline to issue any order restricting or suspending the Landlord's right to enter the rental unit—subject, of course, to section 29 of the Act.

Is the Tenant entitled to assign their tenancy agreement?

Based on the evidence before me, the issue does not appear to involve assignment or subletting.

"Assignment" is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. (See *Residential Tenancy Policy Guideline 19 – Assignment or Sublet).* "Subletting" occurs when the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

Neither of these circumstances appear to exist. Rather, the Tenant has taken on a roommate. A roommate is a third party with no rights or obligations under the Act. However, a roommate may be considered an "occupant." As set out in the addendum to the tenancy agreement, "Any additional occupant(s) will be charged additional rent of $100/moth [*sic*] per person." The Tenant signed the addendum and therefore agreed to this term. A landlord is permitted under the Act to charge an additional amount of rent for additional occupants.

Consequently, because this issue does not actually have to do with assignment or subletting, the Tenant's request for permission to assign or sublet is moot. That having been said, it is my finding that the Landlord is entitled to request an additional $100.00 in monthly rent for each occupant that the Tenant has in the rental unit.

Is the Tenant entitled to an order requiring Landlord compliance with the Act, the regulations, or the tenancy agreement?

The Tenant noted that this issue was resolved and no determination or finding is needed.

Is the Tenant entitled to recover the application fee?

Under section 72 of the Act, an arbitrator can order one party to pay a fee to another party. Typically, when an applicant is successful, the respondent must pay an amount equal to the applicant's application fee.

Here, while the Tenant was largely unsuccessful with most claims made. But they were successful in obtaining certain orders for repairs to the refrigerator and for the removal of the Landlord's property. Given this partial success I am inclined to grant partial recovery of the fee.

Pursuant to section 72(2)(a) of the Act the Tenant may deduct $50.00 from their May 15th or June 15th rent payment.

Conclusion

For the reasons set out above the Tenant's application is granted, in part.

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: April 14, 2023

Residential Tenancy Branch