

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

On December 11, 2023, the Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

On January 2, 2024, the Tenant applied for:

- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Preliminary Matters

The Landlord says they were unable to open the digital evidence from the Tenant due to the type of connection on that specific USB stick. The Landlord requests to exclude the Tenant's evidence.

I decline to exclude the evidence because I find the Landlord did not make a reasonable effort to locate an adapter or other method of opening the evidence. The Landlord did not tell me that they requested for the Tenant to provide the evidence in any other format.

Given the necessity to address a wide range of issues, the hearing did not complete within the allotted time. The Landlord requested a chance to present their arguments and evidence. Although the Arbitrator indicated the hearing would be adjourned, after a thorough review of the evidence, I decline to do so.

Under Rules 7.8 and 7.9 of the *Residential Tenancy Branch Rules of Procedure*, I decline to adjourn the hearing because I do not find an adjournment would assist the parties in coming to a resolution. I find the Landlord's written submissions provide a full picture of the history of the tenancy and the issues currently in dispute.

I find I clearly understand the Landlord's arguments based on their written submissions and their testimony provided at the hearing of this matter. I find I have heard enough from both parties to make a determination in this matter.

Issues to be Decided

Is the Tenant entitled to compensation for damage or loss under the Act?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to change the locks?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement under section 62 of the Act?

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

Is the Tenant entitled to recover their filing fees under section 72 of the Act?

Background and Evidence

The Landlord is the father of Tenant PM. Tenant PM began residing in this rental unit in September 2020 with a co-tenant and a written tenancy agreement for the monthly rent of \$2,000.00, without a deposit.

Tenant PM's previous co-tenant ended that tenancy effective February 28, 2021. Tenant PM did not pay any rent from March 2021 to January 2022. Tenant PM's current spouse AH began residing in the rental unit in February 2022. The Landlord insists that AH is a roommate or occupant and not a Tenant.

The parties have described a current verbal agreement for monthly rent of \$1,500.00, due on the first of each month. The Landlord says this was a temporary forbearance agreement, and rent is actually \$2,000.00 per month as it was in the previous written tenancy agreement with PM and her ex. The Tenant disagrees.

Based on the evidence I have summarized the following history of payments related to the rental unit:

| Date | Rent Amount | Method of rent payment | Name of payor |
|---------------------------------|--|--|---------------------------|
| September 2020 to February 2021 | \$2,000.00 | Post-dated checks | Previous co-tenant |
| <i>January 27, 2021</i> | <i>Email notice to end tenancy effective February 28, 2021</i> | <i>Request to return remaining post-dated checks</i> | <i>Previous co-tenant</i> |
| March 2021 to January 2022 | \$0 | None | None |
| February 2022 to April 2022 | \$1,500.00 | Cash | PM |
| May 2022 to October 2022 | \$1,500.00 | Direct deposit | PM |
| November 2022 to January 2024 | \$1,500.00 | Bank draft | AH |

The Landlord says they entered into a temporary verbal forbearance agreement with PM in March 2021 after PM was unable to pay rent. The Landlord has not provided any evidence in support of the terms of this agreement, including its temporary nature.

There is no evidence that the Landlord made any claim against PM for 11 months of unpaid rent from March 2021 to January 2022.

The Landlord says they were forced under duress to allow their daughter PM to pay \$1,500.00 in monthly rent from February 1, 2022, onwards. The Landlord says PM's roommate AH moved into the rental unit against the Landlord's wishes in February 2022.

The Landlord says they did not complete their standard practices to start a new tenancy with PM and AH. For example, the Landlord did not provide a written tenancy agreement and the Landlord did not request or copy AH's identification.

The Landlord did not provide evidence that they served PM any warning, breach letter, or eviction notice regarding their belief that AH was an unauthorized roommate or occupant.

The Landlord says they made note on the bank drafts received as rent from AH from November 2022 to January 2024 that AH was not a Tenant.

In December 2023, poor communications between the parties regarding repairs to the hot water tank and bathroom sinks culminated in the Tenant filing an application for compensation along with a request to change the locks and set conditions on the Landlord's right to enter the property.

The Landlord says due to the Tenant PM and occupant AH's conduct during repairs for the plumbing issues in December 2023, the Landlord decided to end their forbearance agreement.

After the Landlord received notice of the Tenant's claims, they served a Notice of Rent Increase on December 19, 2023, requiring the Tenant to pay an additional \$570.00 per month. This was based on a return to a rent of \$2,000.00 plus an increase of \$70.00 or 3.5%, as of April 1, 2024.

The Tenant disputed this notice of rent increase on January 2, 2024.

Analysis

Is the Tenant entitled to compensation for damage or loss under the Act?

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states in order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant says the Landlord has harassed, threatened, and intimidated them and caused emotional abuse and refused to complete repairs. The Tenant says the Landlord refuses to acknowledge that the daughter's spouse is a tenant and the Landlord refuses to provide a written tenancy agreement.

The Tenant testified that there were issues with slow draining bathroom sinks and the hot water tank leading to what they believe were unauthorized entries by the Landlord.

There was a letter from the Landlord on December 5, 2023, saying they will enter on December 7, 2023, to assess the hot water tank. There was a letter from December 10, 2023, where the Landlord said they would enter on December 14, 2023, but apparently the Landlord did not enter at that time. I find the communications between the parties show the Landlord provided notice of entry for repairs. The Tenant has not presented evidence of harassment or threats.

I find the Tenant's application was filed on December 11, 2023, and the Tenant has not described any incident prior to that date for which they are seeking compensation. For example, the Tenant has not described how the Landlord breached the Act prior to December 11, 2023, or proven the actual loss they suffered as a result of that breach. I find the Tenant has failed to prove the amount of loss suffered as a result of the Landlord failing to provide a tenancy agreement.

While I acknowledge the Tenant has suffered medical issues and a difficult relationship with their family, the Tenant has not proven on a balance of probabilities that the Landlord breached the Act, how it caused damages to the Tenant, or proof of the value of those damages, and that the Tenant acted reasonably to minimize their loss.

Therefore, I dismiss this portion of the Tenant's application without leave to reapply.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

The Tenants acknowledged that they sent a request for emergency repairs on January 12, 2024, for slow draining bathroom sinks. Afterwards, the Tenant believes the Landlord entered the rental unit unlawfully on January 29, 2024, when the Tenants were out of town.

Given the Tenant's request for repairs and the Landlord's reasonable need to assess the issues, I find the Landlord provided adequate notice to enter the rental unit on all the occasions in December 2023 and January 2024 whether or not the Tenant was home.

Therefore, I dismiss this portion of the application without leave to reapply.

Is the Tenant entitled to change the locks?

Section 70 of the Act allows for an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied that the landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the landlord to give 24 hours written notice before entering the rental unit. The arbitrator may authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

The Tenant has not described any incident where the Landlord entered the rental unit without providing notice.

Therefore, I dismiss this portion of the Tenant's application without leave to reapply.

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

The Tenant says they have not received a written tenancy agreement. I find the Landlord is required under section 13 of the Act, to prepare the tenancy agreement in writing and provide it to the Tenant. The agreement must be signed by the Landlord and the Tenant and provided to the Tenant within 21 days of signing.

I find PM's previous tenancy agreement with the Landlord was ended effective February 28, 2021. I make this finding based on Policy Guideline 13, which says:

A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants. ... Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement. If a tenant remains in the rental unit and continue paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

I find the Landlord accepted written notice to end the tenancy from the previous co-tenant and agreed to end the previous tenancy. This is supported by the fact that the Landlord did not deposit any of the previous co-tenant's post-dated checks for rent after February 2021.

I find the Landlord and Tenant PM implicitly entered into a new tenancy agreement based on a monthly rent of \$1,500.00, whether or not the Landlord accepted AH as a Tenant. I find the Landlord has not persuaded me that they made this agreement under duress. The threat of their daughter and grandchild to moving away does not amount to duress.

I find the Landlord did not provide any documentary evidence that the agreement for rent of \$1,500.00 was a temporary verbal forbearance agreement. I am not persuaded that both parties agreed the Tenant would begin to pay \$2,000.00 after any length of time.

I find the Landlord has breached their duty to provide a written tenancy agreement based on the new terms implied over the last two years while the Landlord has accepted rent of \$1,500.00 per month, most often in the form of a bank draft from AH.

I find the Landlord's notation on each bank draft that AH is not a Tenant does not negate the fact that the Landlord accepted rent from AH for 15 months without taking any steps to change that situation. I am not persuaded that the Landlord was unable to address that situation.

I find that PM and AH are both Tenants.

Under section 62 of the Act, I order the Landlord to comply with their duty to prepare a written tenancy agreement based on a monthly rent of \$1,500.00 and provide a copy to the Tenants PM and AH by March 31, 2024.

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

Section 41 of the Act establishes that a Landlord may impose a rent increase only up to an amount calculated in accordance with the regulations, ordered by an Arbitrator, or agreed to by the Tenant.

The Tenant disputes the Landlord's proposed rent increase of \$570.00. For the reasons listed in the section above, I find the proposed rent increase is unlawful.

I cancel the Notice of rent increase for \$570.00 issued December 19, 2023.

Is the Tenant entitled to recover their filing fees under section 72 of the Act?

As the Tenant was partly successful in their application, I grant the Tenant \$100.00 towards their filing fees for two applications under section 72 of the Act.

I authorize the Tenant to deduct \$100.00 from one future rent payment in full satisfaction of this award.

Conclusion

I dismiss the Tenant's claim for compensation under section 67 of the Act, without leave to reapply.

I dismiss Tenant's request for an order to suspend or set conditions on the Landlord's right to enter the rental unit, without leave to reapply.

I dismiss the Tenant's request to change the locks, without leave to reapply.

Under section 62 of the Act, I order the Landlord to comply with their duty to prepare a written tenancy agreement based on a monthly rent of \$1,500.00 and provide a copy to the Tenants PM and AH by March 31, 2024.

I cancel the Notice of rent increase for \$570.00 issued December 19, 2023.

I authorize the Tenant to deduct \$100.00 from one future rent payment in full satisfaction of their filing fees under section 72 of the Act.

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 5, 2024

Residential Tenancy Branch