Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes DRI MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute a rent increase and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally on October 9, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to cancel a notice of rent increase as a result of that breach?
3. If so, has the Tenant met the burden of proof to acquire a monetary order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective August 1, 2006. Rent is payable on the first of each month in the amount of $567.00 and the Tenant paid a security deposit of $275.00 on July 20, 2006.

The Tenant testified that she is disputing the month in which the Landlord began to collect the rent increase. She stated that she was informed by a lawyer that a landlord could not put a rent increase into effect until the anniversary of her tenancy which in this

case is August. Her rent increase was effective June 1, 2010 and not August 1, 2010. When she attempted to discuss this with the Landlord the Landlord's boyfriend began to yell and scream at her so she moved on. She is not disputing the increase itself rather the date it was effective.

Sometime during the first week of September 2010 she had problems with an electric plug not working in her kitchen. She advised the Landlord who came over and fiddled with the fuses and said the issue was repaired. Later that evening she realized that the heater in the living room was no longer working. She called her friend who had been visiting earlier when the Landlord came to fix the fuses and he recommended that she go above the Landlord's head to report this. So she called the owner of the building and they told her to inform the Landlord. I asked if she contacted the Landlord that evening and she stated that the Landlord was hard to locate. I asked again later in the hearing to which she replied "I cannot remember".

She said the Agent appeared at her place the next morning to see what the problem was and left doing nothing saying he would return. She began to receive messages from the Landlord slid under her door to request times to come in and fix the outlets however the Landlord only wanted to enter her suite weekdays up to 6:00 p.m. She has to work to pay her rent and could not afford to take time off to let the Landlord in to conduct repairs. I asked why she would not let bonded contractors in to fix her unit if she had no heat. She stated that it was her set parameters that she must be home if anyone was going to enter into her suite. She said she gave the Landlord letters of when she would be available to have the work conducted and copies of these letters were included in her evidence.

They came in one day near the end of September 2010 around 4:30 but she was expecting a call from her doctor so she told them to leave at 4:50 p.m. She stated that during the last week of September the Agent and an electrician came in and finally fixed the problem. I clarified her testimony on two occasions and each time she stated the heat was repaired at the end of September 2010. She confirmed she is seeking $200.00 for each of the two months she was without heat (September and October) plus $20.00 for the cost to replace her plant, which died as a result of no heat, that she purchased a while back for about $14.97. She did not supply proof of purchasing the plant.

She stated that it was a very cold fall in 2010 and that she was forced to heat her unit with her oven.

The Landlord testified she issued the notice of rent increase in accordance with the Act. The Tenant has never have a rent increase since starting her tenancy in 2006 therefore the Landlord was at liberty to increase the rent after the three month notice was issued.

She confirmed the Tenant called her on September 3, 2010 about problems with the fuses. The Tenant told her she could not access the unit until September 8, 2010 when the Tenant would be available. When she attended on September 8th the Tenant had company and the Tenant still wanted her to come in and fix the fuses. She realized that the problem may be with the electric outlet so she told the Tenant she would have to get someone else to look at that and left.

The Landlord stated that she was not informed that the Tenant had no heat until after the Agent attended on October 3, 2010. It was October 28, 2010 when they were able to have the schedules work out so they could gain entry and repair the problem. This was the earliest date the Tenant would allow them in, at her convenience. The Landlord wanted to point out that electricity is included in the Tenant's rent.

The Agent testified that they made several attempts to get inside and were not told about the unit until the visit in early October when they did finally arrange to get in; only to be asked to leave shortly after arriving. It was during this visit that he saw the stove was on and the patio door was open. He stated there was heat in the bedroom, the hallways were heated, and she had tenants on either side with the heat on. He questioned why she would have the door open when it was that cold out and suspects that is what killed her plant. He stated they did their due diligence in attempting to get into the unit to make the repairs.

The Tenant stated they never came in to conduct their first check until September 8, 2010. Her patio door was not open when the Agent attended and there was no tenant below her so her floor was very cold.

Analysis

Section 42 of the Act states as follows:

(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

> (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

There is no provision in the Act that states a rent increase must not be put into effective until the anniversary date of the tenancy agreement. Therefore I find the rent increase imposed effective June 1, 2010 to be in accordance with Act; and the Tenant's request to dispute the effective date of the increase is hereby dismissed, without leave to reapply.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant contradicted her own evidence when she continued to testify the heat was repaired at the end of September 2010 and not October 2010. I accept the Landlord and Agent's testimony that they made several attempts to schedule a time to enter the unit but that these times did not work for the Tenant. The Tenant is the author of her own misfortunes in this case by creating delays for when the repairmen could enter the suite.

There is no evidence to support why the Tenant did not arrange to have a friend or agent attend the unit to allow the repairmen to conduct their work, nor is there evidence to support why a bonded repair person could not enter the suite under the Agent's supervision, in the absence of the Tenant. The Tenant was clearly of the opinion that the work could not be performed unless it worked with her schedule. Based on the aforementioned I find the Tenant failed to mitigate her loss.

After careful consideration of the evidence and testimony before me I find there to be insufficient evidence to support the Landlord breached the Act. Further, I find there to be insufficient evidence to support the Tenant informed the Landlord, in writing, that she had no heat in her living room prior to communications in early October 2010.

As per the aforementioned I find the Tenant has provided insufficient evidence to prove the test for damage or loss as listed above and I hereby dismiss her claim of $420.00, without leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: February 09, 2011.

Residential Tenancy Branch