Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LAT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the Residential Tenancy Act, (the "Act"), by the Tenant for an order authorizing her to change the locks on the rental unit, a monetary order for a rent reduction for restriction of laundry facilities and rent increase for hydro costs, and recovery of the filing fee.

The Tenant provided affirmed testimony that she served the Landlord in person on February 16, 2012 with the Application for Dispute Resolution and Notice of Hearing.

All parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

Landlord hearing issue

The Landlord testified that she was partially hard of hearing and not sure if I would understand her over the phone. I asked the Landlord if she wished to adjourn to make written submissions on whether an in person hearing was being requested. The Landlord stated that she wished to proceed by phone and that there were some issues she wanted resolved today. The Landlord confirmed that she could hear me and the Tenant clearly by phone, and I confirmed that I could hear her clearly. The Landlord agreed to proceed without making a request for adjournment for consideration for an oral hearing.

Tenant evidence/revised claim submission of February 16, 2012

The Tenant testified that they delivered an evidence submission to our office on February 16, 2012 and personally delivered this to the Landlord the same day along with the Notice of Hearing and Application for Dispute Resolution. The Landlord testified that they received this on February 16, 2012. The Tenant stated that she was told by our office that she could submit evidence after making her Application. The

Tenant's initial Application of February 10, 2012 did not provide any calculation of amounts being claimed, rather it stated $0 for the monetary order sought. The Tenant's Application indicated only the following issues: authorization to change the locks to the rental unit; rent reduction for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee. The Tenant's Application details indicated that the Landlord had requested a rent increase of $50.00 for hydro, which the Tenant said no to; that the Landlord had installed a padlock on the laundry room door restricting the Tenant's use of the laundry facilities; and that the Landlord had illegally entered the rental unit on two occasions, resulting in the Tenant installing a lack on the door the Landlord had come in through.

The Tenant's evidence submission to our office on February 16, 2012 states that she is seeking to increase her claim to $27,510.00, consisting of $300.00 for storm door and installation costs; $400.00 for restriction from use of laundry facilities for February ($200.00) and March 2012 ($200.00); $100.00 for paint and supplies; $60.00 for loss of use/enjoyment of bedroom for painting; $1,000.00 for lack of peaceful enjoyment, lack of privacy and freedom from unreasonable disturbance; $25,000.00 due to affliction of undue stress and pain; and future moving expenses $650.00.

I find that the documents the Tenant submitted, on February 16, 2012, which the Tenant refers to as evidence, are actually a significant amendment to their claim increasing the claim to over $5,000.00, and resulting in new items being claimed that were not included on her initial application. Additionally, the Tenant has claimed in excess of the $25,000.00 maximum that Act allows. The Tenant neglected to fill out a new Application form or pay an increased filing fee, as required when a claim is amended or exceeds $5,000.00, as required by section 59 of the Act, section 8 of the Regulation, and by the Residential Tenancy Branch Rules of Procedure.

I find that the Tenant failed to file an amended/revised application in accordance with section 59 of the Act and the Rules of Procedure; and pay the filing fee for the amendment/revision of the application in accordance with the Act and section 8 of the Regulation. Additionally, the Tenant has neglected to limit her amended claim to the $25,000.00 maximum allowed by section 58 of the Act and Policy 27of the Residential Policy Guideline.

The Tenant paid only an initial $50.00 filing fee for their Application on February 10, 2012. As the Tenant's evidence of February 16, 2012 is an attempt to amend/revise their claim in excess of $5,000.00, I find that the Tenant failed to pay a $100.00 filing fee as required by the Act and Regulation. I also find that the Tenant failed to limit her

claim to under $25,000.00 which is the maximum claim allowed under section 58 of the Act.

I find that the Tenant's initial claim of February 10, 2012 for rent reduction due to restriction from use of laundry facilities, rent increase for hydro costs, lock on the rental unit door, and the filing fee are appropriate to be dealt with at today's hearing.

I find that the Tenant's revised claim of February 16, 2012, with the exception of the $400.00 claim due to restriction from use of laundry facilities, is dismissed with leave to reapply; however the Tenant must adhere to the parameters of the Act with regards to her claim should she reapply.

One Month Notice and 10 Day Notice to End Tenancy

At the hearing the Landlord and Tenant requested that a decision be made on a 10 Day Notice issued to the Tenant and a One Month Notice issued to the Tenant. As these are significant issues that affect whether the tenancy would continue, I agreed it was appropriate to amend the Application to deal with the Notices.

The Landlord and Tenant agreed at the Hearing that the 10 Day Notice was posted on the door of the rental unit on February 09, 2012, and that the outstanding amount of the rent was paid on the same date. The Landlord agreed that the 10 Day Notice is of no effect as it was paid in full. As a result, I find the 10 Day Notice is of no effect.

The Landlord provided a copy of the One Month Notice into evidence the day prior to the hearing. The Tenant stated that she already had a copy of it as it was personally served on her by the Landlord on February 02, 2012, the date indicated on the One Month Notice. The Tenant stated that she thought she had disputed this on her claim and she also stated that she thought she had faxed the two pages of the document into our office on February 13, 2012 to add to her claim. The Tenant stated that she did not put a cover sheet on the documents, but just faxed page one and page two of the One Month Notice. I advised the Tenant that the documents were not on file and were not received in our office. The parties agree that the One Month Notice was personally served on the Tenant on February 02, 2012, with an effective end of tenancy date of March 02, 2012. The parties agree that they discussed the document and the Landlord agreed that the effective end date should be corrected to March 31, 2012. The Tenant did not indicate on her initial claim Application of February 10, 2012 that she was requesting to cancel the One Month Notice to End Tenancy. The Tenant requested at the hearing on February 22, 2012 that the One Month Notice to End Tenancy be cancelled. As a result the amendment to her Application to add the issue of disputing the Notice is effective February 22, 2012. The Act and the Notice stated that the Tenant had 10 days to apply for dispute resolution of the Notice, personally served on her on February 02, 2012, if she did not agree with it. The Tenant failed to dispute the Notice in the time frames required by the Act and the Notice. As a result, I find that the One Month Notice is in effect with the corrected date of March 31, 2012 for vacancy, pursuant to section 47 and 53 of the Act.

The Landlord requested an order of possession for March 31, 2012 for the rental unit, at the hearing. Pursuant to section 55 of the Act, I find that the Landlord is entitled to an order of possession as requested.

Issue(s) to be Decided

Is the Tenant entitled to an order authorizing her to change the locks on the rental unit, a monetary order for a rent reduction for restriction of laundry facilities and hydro increase, and recovery of the filing fee?

Background and Evidence

The parties agreed that they have a written tenancy agreement effective December 01, 2011 for a monthly rent of $600.00. The parties agreed that rent is due on the first of each month. The Tenant provided a copy of the tenancy agreement signed by the parties on December 01, 2011 into evidence. The tenancy agreement states that the rent includes water, electricity, heat, stove and oven, refrigerator, laundry, storage, garbage collection, and parking for one vehicle.

The Tenant stated that the Landlord intends to increase the rent by $50.00 per month due to increased hydro costs. The Tenant stated that she refused to pay $50.00 more per month as hydro is included in her rent. The Tenant stated that the increase has not occurred.

The Landlord confirmed the rent increase for hydro has not occurred.

The Tenant stated that she put a new lock on a door on the rental unit after the Landlord entered the rental unit on two occasions without her consent. The Tenant stated that she has since given the Landlord the key. The Tenant stated that she is concerned that the Landlord will try to enter the rental unit again and is requesting to change the lock and not provide the Landlord a key.

The Landlord stated that she was provided the key, but she does not enter the Tenant's rental unit without her consent. The Landlord stated that she has in the past been concerned about the Tenant's well being as she did not answer the door when she knocked, and on another occasion she went to check on a fuse and knocked and got no answer, but heard the Tenant in the shower and so she left. The Landlord stated that she will only go in the rental unit in future if it is an emergency, and will adhere to the requirements of the Act.

The Tenant stated that the Landlord has restricted her access to laundry by putting a lock on the door that accesses the laundry area. The Tenant stated that she should have unrestricted access and be able to do laundry whenever she needs to. The Tenant confirmed that the laundry room is inside the Landlord's house and is not in the rental unit. The Tenant stated that she would regularly do laundry once a week up to three loads. The Tenant stated that although the Landlord does not always have the laundry room locked now, she is not comfortable using the Landlord's laundry room any more. The Tenant stated that she has not done any laundry since the issue arose on February 01, 2012 and that her laundry is piling up as she does not own a car. The Tenant's application did not state an amount for laundry however, her evidence submission indicated that she is claiming $200.00 for February and $200.00 for March 2012 for not having unrestricted access to the Landlord's laundry. The Tenant stated that she does not wish to agree to a schedule to use the Landlord's laundry and no longer feels comfortable using the Landlord's laundry room and has no intention of using it again. The Tenant then also testified that in early February she rented a car and took some laundry into a laundromat in town and that this cost her $100.00.

The Landlord stated that the laundry room is inside her personal residence in the pantry area, and there is only one door in and out of the room. The Landlord stated that it is not reasonable to give the Tenant access to her private residence when the Landlord is not at home, as a result the Landlord stated that she has a lock on the door whenever she is out taking care of her animals or in town. The Landlord stated that she is home quite often and is willing to work out a schedule with the Tenant or just have the Tenant call her whenever she needs to use the laundry. The Landlord stated that the Tenant still has access to the laundry as needed. The Landlord stated that the Tenant can get a ride to town with her anytime it is necessary if that is her preference. The Landlord stated that the Tenant has not rented a car nor taken any laundry to a laundromat in town.

Analysis

I have considered all relevant testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the tenancy agreement includes the hydro and that the parties have not reached a mutual agreement to change the tenancy agreement. I find that the Tenant is premature in her application for a rent reduction or dispute a rent increase of $50.00 per month as the rent had remained at $600.00 per month and is not changed at this time.

As a result, I dismiss the Tenant's request for a rent reduction for the proposed hydro cost increase, because it has not occurred at the time of the hearing.

I find that, it is appropriate to order the Landlord to be in compliance with the Act with regards to entry to the rental unit. For the parties information the Act sets out the Landlord's right of access to the rental unit, and defines "emergency" as follows:

> **Landlord's right to enter rental unit restricted**
> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> (d) the landlord has an order of the director authorizing the entry;
> (e) the tenant has abandoned the rental unit;
> (f) an emergency exists and the entry is necessary to protect life or property.
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

> **33** (1) In this section, **"emergency repairs"** means repairs that are
> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) made for the purpose of repairing
> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.

I decline to allow the Tenant to change the locks at this time or withhold a key from the Landlord. Should the Landlord contravene the rental unit entry provisions of the Act after the date of this decision, the Tenant may reapply for a lock change and any costs incurred at that time.

Section 67 of the Act states:

> **Director's orders: compensation for damage or loss**
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> **67** Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I do not find that the Tenant has provided sufficient evidence of any monetary loss incurred a result of the Landlord locking the door to their private residence, which contains the laundry room, on an occasional basis. It is not reasonable for the Tenant to have full access to the Landlord's private residence when the Landlord is not at home. The Landlord's request to have the Tenant call her to see if she is home to use the laundry and willingness to establish a schedule with the Tenant is reasonable. The tenancy agreement does not contain the words "unrestricted" with regards to use of the laundry, and I find the word "free" next to the laundry, is to be interpreted as meaning at no cost to the Tenant and that it is not coin operated. I find that the Tenant's testimony regarding costs incurred in relation to the laundry is not credible as it contradicts other testimony she gave at the hearing. I find that the there are no damages or compensation owed to the Tenant with regards to the laundry, and I decline to reduce the rent as a result.

As the Tenant has not been successful in her Application, I decline to award the Tenant the filing fee paid for the Application.

Conclusion

The Tenant's request for an order authorizing her to change the locks on the rental unit, a monetary order for a rent reduction for restriction of laundry facilities and hydro increase, and recovery of the filing fee is dismissed.

I order the Landlord to be in compliance with the Act with regards to entry to the rental unit.

As stated in the preliminary findings, I find that the Landlord is entitled to an order of possession for the rental unit effective **March 31, 2012 at 1:00 P.M.** This order must be served on the Tenant and may be filed in the Supreme Court.

The order of possession accompanies the Landlord's copy of the decision.

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 28, 2012.

Residential Tenancy Branch