



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, OLC, LRE, AAT, LAT,

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlords.

Preliminary Matters:

The respondent JK testified that he is the owner of the rental property and that he has a fixed term tenancy agreement with the other respondent KE that is to end on January 31, 2014. He stated that he has had no contact with the applicant and he has not entered into a tenancy agreement with the applicant. The applicant submits that the other respondent KE is acting as agent on behalf of JK. After carefully considering the evidence presented I determined that the applicant has a landlord-tenant relationship with KE but not with JK. **Accordingly, I ordered that the application against JK be dismissed without liberty to re-apply.**

The applicant identified the respondent KE using three different first names. The parties agreed the first name of the respondent KE was not correctly set out in the Application

for Dispute Resolution. I ordered the Application for Dispute Resolution to be amended to correctly identify the respondent KE.

The tenant has filed a lengthy single paged record of the relationship he has had with the landlord since its start in November 2012. The evidence purports to amend his application although he has failed to follow the Rules of Procedure in amending the Application for Dispute Resolution. Much of the evidence in the documents is not relevant to the issues raised in the Application for Dispute Resolution and cannot be considered. Further, the tenant failed to properly amend his Application and the amendments cannot be considered. The landlord has responded with a number of allegations. However, the landlord has not filed an Application for Dispute Resolution. I determined that it was appropriate to consider only that evidence relevant to the claims set out in the original Application for Dispute Resolution filed by the tenant.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 5, 2013?
- b. Whether the tenant is entitled to an order recovering an additional rent increases?
- c. Whether the tenant is entitled to an order that the landlord unseal a bedroom window?
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. Whether the tenant is entitled to an order allowing access to the rental unit for the tenant's guests
- f. Whether the tenant is entitled to an order authorizing the tenant to change the locks to the rental unit.

Background and Evidence

The respondent KE has entered into a fixed term tenancy with JK that is to end on January 31, 2014. There are two bedrooms in the basement. JK rented one of the bedrooms to a family member RS. He rented the second bedroom to the applicant. The applicant has exclusive use of his basement room and shared use of the living room, kitchen and bathroom.

The room was advertised for rent at \$495 per month. The tenancy commenced on November 1, 2012. The tenant testified that he paid rent of \$500 for the months of November and December. At the hearing he acknowledged that he agreed with the landlord that the landlord could keep the \$5 extra per month for the months of November and December as the landlord has purchased beer for him.

In December the landlord approached the tenant demanding that the tenant pay an additional \$25 per month for the use of the internet. The tenant testified he felt intimidated and complied with the landlords demand. There is a dispute between the parties as to whether internet was included with the original rent. The tenant testified it was part of the original rent and thus the landlord is obtaining an illegal rent increase. The landlord disputes this saying internet and cable were not part of the original rent and that the tenant was provided with internet at the tenant's request for the additional rent of \$25 per month.

The rent for January to May in the sum of \$520 was paid in cash to the landlord. However, for June and July the tenant provided the landlord with bank drafts in the sum of \$520 each but the bank drafts were not in the correct name of the landlord and could not be cashed by the landlord. The landlord has not received the rent for June and July.

Analysis:

Application to Cancel the 10 day Notice to End Tenancy

The landlord gave the Tenant a 10 day Notice to End Tenancy dated June 5, 2013 for non-payment of the rent for June. However, that typewritten Notice was not in the correct form required under the Residential Tenancy Act. As a result I ordered that the 10 day Notice to End Tenancy dated June 5, 2013 is of no force and effect. The tenancy is ongoing with the rights and obligations of the parties remaining unchanged. If the landlord feels that he has grounds to end the tenancy he must first serve the Tenant with a Notice to End Tenancy in the approved form.

Application for to Recover an Additional Rent Increase

I determined the parties originally agreed that the rent was \$495 per month due on the first day of the month. There is a dispute between the parties as to whether internet was part of that original agreement. The tenancy agreement is not in writing.

The Residential Tenancy Act imposes an obligation on the landlord to record a tenancy agreement in writing in order to avoid conflicts like this. After hearing the disputed evidence I determined the use of the internet was part of the original agreement. As a result the landlord did not have a right to charge the additional \$25 per month commencing January 1, 2013.

I determined the tenant agreed to waive his claim for the \$5 overpayment for November and December as the landlord purchased beer in consideration of this overpayment. However, I determined the monthly rent is \$495 per month due on the first day of each month. I determined tenant has made an overpayment of \$25 per month for the period January to May inclusive for a total of \$125. **The tenant has the right to apply this \$125 overpayment to rent that is owed.**

Application for an order that the landlord unseal a bedroom window

The tenant seeks an order that the landlord unseal the bedroom window so that he can receive fresh air. The tenant failed to present sufficient evidence that the window in its present situation violates any law, bylaw or regulation. The tenant was aware of the condition of the bedroom window when he agreed to rent the rental unit. I determined

the tenant failed to prove that he is entitled to an order that the landlord unseal the window. Accordingly this claim is dismissed.

Application for an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant is entitled to the exclusive possession of his bedroom. He shares the use of the kitchen, living room and bathroom with a relative of the landlord. It is not appropriate to make an order suspending or setting conditions on the landlord's right to enter the living room, kitchen and bathroom as the landlord is entitled to visit his relative. The tenant failed to present sufficient evidence that the landlord has wrongfully entered into the tenant's bedroom. I dismissed the tenant's application for an order setting conditions on the landlord's right to enter the rental unit.

Application for an allowing access to the rental unit for the tenant or the tenant's guests:

The tenant testified that the landlord on between 9 or 10 occasions has told the tenant that certain visitors are not permitted in the rental property. The landlord acknowledged that on some occasions he has taken that position where the proposed guest is significantly intoxicated or is an acknowledged drug pusher.

Section 30 of the Residential Tenancy Act provides as follows:

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

The landlord is obliged to follow the law as set out above. Whether a restriction of access is unreasonable is an issue of fact that must be decided on a case to case

basis. I determined there is insufficient evidence to make a determination and accordingly I decline to make an order in this case.

Application for an order authorizing the tenant to change the locks:

I determined the tenant has failed to present sufficient evidence that the landlord has illegally entered into the rental unit. As a result I dismissed the tenant's application for an order changing the locks.

Conclusion:

I ordered that the Notice to End Tenancy dated June 5, 2013 be cancelled because the landlord failed to use the approved form. I determined the rent is \$495 per month and that internet is included in the rent. Further, the tenant has made a \$125 overpayment that can be applied to future rent. I dismissed the application for an order that the landlord unseal the bedroom window. I also dismissed the application for an order suspending or setting conditions on the landlord's right to enter the rental unit, for an order allowing access to the tenant's guests and an order authorizing the tenant to change the locks.

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: July 10, 2013

Residential Tenancy Branch