



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR, MNDC, DRI, LAT, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and to dispute a noncompliant rent increase. The tenant is also seeking an order to change the locks, restrict the landlord's access and force the landlord to complete repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

The landlord testified that she did not receive the tenant's application. However, the tenant was able to provide a tracking number and confirm that Canada Post did attempt to deliver the package. According to the tracking information, the package was not picked up by the recipient after a notice card was left.

Based on the evidence, I accept that the landlord was properly served under the Act.

Issue(s) to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Should the landlord be ordered to comply with the Act with respect to imposing a rent increase?

Is the tenant entitled to monetary compensation for loss of value to the tenancy?

Is the tenant entitled to change the locks and restrict the landlord's access?

Should the landlord be ordered to complete repairs?

Background and Evidence

The tenancy began in September 2013. The tenant stated that the unit was rented to them for \$550.00 each for the three occupants, or \$1,650.00, plus \$150.00 in utilities for total rent of \$1,800.00 including utilities.

The tenant had submitted a copy of the rental advertisement stating that rooms were available for \$550.00 per month. According to the tenant, they signed the written tenancy agreement and accepted the landlord's rate of \$1,800.00 per month, because they were assured that this higher amount would include \$150.00 for utilities. The tenant testified that they received their copy of the tenancy agreement later and then found that the landlord had added additional comments beside the \$1,800.00 shown for rent.

The tenant pointed out that, written beside the box on the agreement where the landlord had filled in \$1,800.00 for rent, the handwritten words, (excerpted below) were added:

"+ Util (Heat, Hydro & H2O) shared bill"

The tenants stated that this handwritten comment was not on the agreement at the time they signed it. The tenants pointed out that they also felt rushed by the landlord at the time of signing and they later observed that the landlord waited until their parents were not present before insisting that they quickly sign the contract.

The tenants are claiming a refund for the over-paid rent. beyond the original \$1,650.00 that they were originally promised.

The landlord testified that the rental rate for the unit was always set at \$1,800.00 and did not include utilities. The landlord stated that the tenancy agreement shows that water, electricity and heat are not included in the rent, as evidenced by the fact that, the specific check boxes beside the different services and facilities were not check-marked on the tenancy agreement form in part 3(b) as being included in rent. The landlord testified that this is in addition to the notation written by beside the rental amount.

In regard to the advertisement for rooms at \$550.00 per person, the landlord acknowledged that the ad contained this wording, but stated that she used the same ad to market other vacancies at various locations. According to the landlord, the content of the ad was not indicative of the rates charged for the unit in question. The landlord pointed out that the tenants willingly signed the written tenancy agreement stating that the rent is \$1,800.00 per month and willingly paid the \$900.00 security deposit.

The landlord testified that the tenants have repeatedly paid the rent late. The landlord testified that the tenants also withheld \$100.00 of the rent owed for January 2014 and failed to pay the utilities. Therefore, the landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent.

The tenants argued that they did not pay the rent late, but that the landlord delayed in cashing their cheques. The tenant testified that, although the issue of utilities was under dispute, they did pay for the utilities they used after they moved in and now submit their payments to another renter living in a different suite in the building who has placed the utility account in the renter's name.

In regard to the tenant's requests to restrict the landlord and change the locks, the tenant testified that the landlord has shown up unannounced at the unit and on the property. The tenant testified that the landlord has also repeatedly verbally harassed and yelled at them and accosted them at every opportunity. The tenants submitted a copy of a letter from the tenant's agent to the landlord about the overcharged rent, the landlord's failure to respond, harassment and allegations that the landlord forged signatures of the tenants on some documents.

The tenants feel they should be compensated for the loss of quiet enjoyment and are claiming \$600.00.

The landlord denied the allegations of forgery. The landlord stated that there was no intent to harass the tenants, but the tenants misunderstood the conversations and that the landlord tried to initiate. According to the landlord, she was merely attempting to discuss rental issues with the tenants, but found them to be uncooperative and confrontational.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy with 3 co-tenants under one agreement. It appears that the final version of the agreement that was signed by all parties was apparently not fully understood by the tenants, as they relied on verbal information that they believe should be enforced as valid terms of this tenancy.

I do not find that the landlord has violated the Act or agreement by charging \$1,800.00 rent, plus a share of the utilities as the written tenancy agreement clearly shows that the parties agreed with this. Even if I accept the tenant's allegations that the handwritten notation about sharing hydro was added later, after the signing, the section of the contract dealing with utilities on the form did not feature the necessary checkmarks to confirm that the utilities would be included in the rent. I also do not find that an advertisement has significant evidentiary weight to counter a signed tenancy agreement negotiated between the parties.

Accordingly, I find that the tenants must pay \$1,800.00 per month as agreed and they will also be responsible for their share of utilities.

However, I find that the tenants genuinely believed they had overpaid the rent and were entitled to withhold \$100.00 per month. Although I found that the tenants were mistaken and violated the agreement by withholding this rent, I grant the tenant's request to cancel the 10-Day Notice to End Tenancy, with the caution that the tenant must comply with section 26 of the Act and pay the rent owed on time every month.

Section 26 of the Act states rent must be paid when due, under the tenancy agreement, whether or not the landlord complies with the Act or the tenancy agreement. I find the tenant is not entitled to keep the rental funds that they wrongfully withheld.

With respect to the tenant's claim for a rent abatement for loss of quiet enjoyment, I find that section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;

- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 (1) of the Act also restricts a landlord from entering the rental unit at will. The part of the Act states that the landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Notice that the landlord will be accessing the unit must include the following:

- (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;

Of course a landlord may gain entrance without the regular notice if a genuine emergency exists and the entry is necessary to protect life or property. The Act also permits a landlord to inspect a rental unit monthly in by giving the required 24-hour written Notice.

I find that, under the Act and the agreement, a landlord must not bother the tenant, and interfere with their activities, nor disrupt their quiet enjoyment by acting in a confrontational way. This would include yelling at or badgering the tenants.

Approaching the tenants, without invitation, to engage them in spontaneous discussions while they are otherwise occupied, would be considered as interference..

I accept the tenant's testimony that they have suffered a loss of quiet enjoyment due to inappropriate conduct by the landlord in communicating with the tenants against their will. Accordingly, I grant the tenants a retro-active rent abatement of 5% each month for the five months from September 2013 to January 2014, for an award totaling \$450.00. This will be credited to the tenants against current and future rent owed as a one-time sum.

I also order that, from now on and to the end of this tenancy, the parties are required to communicate in writing and avoid direct conversations in person or by telephone. I

further order that the landlord comply with section 29 of the Act in accessing the premises.

Based on the evidence discussed above, I hereby make the following orders:

- The 10-Day Notice to End Tenancy for Unpaid Rent dated January 3, 2014 is cancelled and of no effect.
- The rental rate for the unit is set at \$1,800.00 per month as reflected in the tenancy agreement, and the tenant is responsible to pay any arrears created by their actions in withholding portions of the past rent.
- The tenant is responsible to pay for their share of the utilities.
- The landlord must comply with section 29 of the Act and not access the rental unit without proper written notice.
- The landlord and tenants will restrict communications to written form, unless impossible.
- The tenant is entitled to be credited with \$450.00 representing a retro-active rent abatement for loss of quiet enjoyment.

Conclusion

The tenants are partially successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled. The tenant is also granted a retro-active rent abatement for past loss of quiet enjoyment. Terms of the tenancy agreement with respect to the rental rate and utility payments are clarified and the parties are ordered to communicate only in writing.

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: January 29, 2014

Residential Tenancy Branch

