



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RP, OLC FF

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 personally served on the landlord on February 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order for that the landlords remove garbage of the previous tenant from the rental property?
- b. Whether the tenants are entitled to an order cancelling a rent increase?
- c. Whether the tenants are entitled to an order prohibiting the landlords from sending not so nice letters threatening to evict the tenants?

Background and Evidence

The rental property is a duplex. Each tenant occupies one of the rental units in the duplex. AM has lived in her rental unit since February 2013. TM has lived in her rental unit since November 1, 2011. However, the parties testified the tenancy agreement has both tenant being jointly and severally liable with a total rent of \$1600 per month.

The landlord removed a large amount of garbage from a previous tenant. However, not all of the garbage was removed. Upon the filing of the within application the landlord has removed a further 3 loads of garbage. The landlord has placed other belongings in a shed which is not part of the tenancy agreement. The only item left to be removed is a large barbecue. The landlord testified that TM told her that she still uses the barbecue and as a result the landlord did not remove it. TM testified she does not use the barbecue.

The landlords testified that they have been contacted by the City with respect to the failure of the tenants to clean their garbage. The City has given the landlords notice that if the garbage is not cleaned the City will take steps to remove the garbage at the landlords' expense.

Application for the removal of garbage from the previous tenant:.

I order that the landlord remove the barbecue by April 21, 2014.

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Application by the tenant disputing a \$50 rent increase.

The tenant asked the landlord if her brother and mother could move into the rental unit to help pay the rent. The landlord agreed but stated she would have to increase the rent by \$50. The tenant agreed to pay the rent increase.

Section 41 and 42 of the Residential Tenancy Act provides as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

- 42** (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.

Amount of rent increase

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The Act does not permit a landlord to increase the rent except in accordance with the Act which requires written notice in the approved form 3 months ahead. **The landlord has failed to comply with the Act and accordingly I order that the rent increase in the sum of \$50 be set aside.**

Whether the tenants are entitled to an order prohibiting the landlords from sending not so nice letters threatening to evict the tenants?

Section 29 of the Residential Tenancy Act provides 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).

The landlords live in a community several hours away. The landlords have a legal right to communicate with the tenants regarding the condition of the rental unit and whether the tenants are complying with obligations under the Act, Regulations and tenancy agreement provided they do so as permitted by the Residential Tenancy Act. I dismissed the tenants' application for an order prohibiting the landlord from sending letters as the tenants failed to prove they are entitled to such an order.

The tenants have been successful with most of their application and are entitled to reimbursement of the cost of the filing fee. **I ordered that the landlords pay to the tenants the sum of \$50 for reimbursement of the cost of the filing fee such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: March 31, 2014

Residential Tenancy Branch

