



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, RP, PSF, RR, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order regarding a disputed rent increase, pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other remedies, identified as a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to recover their filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her lawyer had permission to speak on her behalf at this hearing.

This hearing lasted approximately 64 minutes in order to allow both parties to fully present their submissions, to deal with service and adjournment issues, and to deal with continuous interruptions by both parties. The hearing began at 11:00 a.m. with me and the two tenants present and the landlord and her lawyer joined late at 11:04 a.m., stating that they had difficulty calling in with the telephone access code. I informed the landlord and her lawyer what occurred in their absence before they called.

The landlord confirmed receipt of the tenants' application for dispute resolution and hearing notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and hearing notice.

The landlord said that she did not receive the tenants' written evidence package of approximately 114 pages, which the tenants said was sent together with their application to the landlord on June 29, 2017, by way of registered mail. The landlord said that she only received the application and hearing notice. The tenants provided a Canada Post tracking number verbally during the hearing but did not provide any independent witness testimony of what was included in the package sent to the landlord. For this reason, I notified the tenants that I could not consider their written evidence package at the hearing or in my decision. The tenants affirmed that they wanted to continue with the hearing on the basis of their verbal testimony only, since their written evidence was being excluded.

The tenants said that they did not receive the landlord's written evidence package of approximately 4 pages, which the landlord said was sent by regular mail, but she did not provide a date. For this reason, I notified the landlord that I could not consider her written evidence package at the hearing or in my decision. The landlord affirmed that she wanted to continue with the hearing on the basis of her verbal testimony only, since her written evidence was being excluded.

At the outset of this hearing, the tenants confirmed that they were only seeking repairs for a refrigerator that was not functioning well, in addition to a monetary order, rent reduction, a disputed rent increase and the application filing fee. The remainder of the tenants' application is dismissed without leave to reapply.

Preliminary Issue – Adjournment Request by Landlord

The landlord requested an adjournment of this hearing because she said that she was in the hospital three days prior to the hearing and was not feeling well because she had high blood pressure, she could not sleep and her back was hurting. The landlord's lawyer stated that he could speak on behalf of the landlord but he could not receive proper instructions because the landlord was not feeling well.

The tenants opposed the adjournment request, stating that the landlord was always saying that she was in the hospital and not feeling well. They said that there is no reason why the landlord could not attend on the phone because she was already present on the call and she did not provide a medical note to prove her complaints.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The landlord did not provide any medical records to support her claim that she was in the hospital three days prior to the hearing or that she was suffering from any medical conditions that prevented her from attending the hearing. She attended the hearing and spoke on her own behalf. She also had a lawyer attend the hearing in order to represent her if she had to leave or was unable to attend. She did not make any attempts to try to request an adjournment prior to the hearing or to obtain the tenants' consent prior to the hearing in order to reschedule the hearing.

I also find that this claim is a more urgent matter because it deals with a repair request that has been outstanding since the parties' last RTB hearing in March 2017. I further find that it may be prejudicial to the tenants to delay this matter any further, since they filed their application on June 29, 2017, and the

landlord had more than two months prior to this hearing on September 11, 2017, in order to prepare for it, including gathering written evidence and giving instructions to her lawyer to speak on her behalf.

Issues to be Decided

Are the tenants entitled to an order regarding a disputed rent increase?

Are the tenants entitled to an order requiring the landlord to make repairs to or replace the refrigerator in the rental unit?

Are the tenants entitled to an order to allow them to reduce rent for the refrigerator issue?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to recover their filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the testimony of both parties, as no documentary evidence was permitted at the hearing, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2014. The tenants continue to reside in the rental unit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The monthly rent prior to any attempted rent increase by the landlord was \$1,400.00, payable on the first day of each month.

The landlord stated that she issued a Notice of Rent Increase, dated March 27, 2017 ("NRI") to the tenants by way of registered mail on March 28, 2017, which the tenants acknowledged receiving a few days later. The NRI attempts to increase the tenants' rent by \$700.00 per month, from \$1,400.00 to \$2,100.00 per month, effective on July 1, 2017. The landlord agreed that the above amount of \$2,100.00 was in excess of the 3.7% amount that is limited by the *Regulation* for the year 2017. The landlord agreed that she did not have an order from an Arbitrator to raise the tenants' rent, nor did she apply for an additional rent increase at the RTB. The landlord said that because the tenancy is only for a fixed term of two years ending on March 31, 2016, that it is now a month-to-month tenancy and she could raise the rent by any amount, despite the fact that the tenancy is continuing.

The tenants dispute the rent increase, claiming that they have a fixed term tenancy of 10 years, ending on June 30, 2025, as per previous RTB hearing decisions. They said that the landlord initially wanted a fixed term of 6 years but then asked for a longer term of 10 years, so the tenants changed the number 6 to a 10, included this in their written tenancy agreement and initialled beside the changes before giving the landlord a copy. The landlord said that the tenants unilaterally made the changes to the two-year fixed term and the landlord never initialled beside it so the changes were invalid.

Both parties agreed that they attended a previous RTB hearing on March 9, 2017, after which a decision of the same date was issued. The file number for that hearing appears on the front page of this decision.

In the previous decision, the Arbitrator dismissed the tenants' compensation and rent reduction claim with leave to reapply to determine who was at fault for a refrigerator not working in the rental unit. The Arbitrator ordered that the landlord have a qualified tradesman attend at the rental unit within 10 days of the decision, produce a report to the tenants, and determine who was at fault for the refrigerator issue.

Both parties agreed that the landlord had a technician attend at the rental unit on March 13, 2017 and he wrote notes, not a report, indicating that the refrigerator should be replaced. The landlord said that the handle and crisper were broken by the tenants, while the tenants claimed that the refrigerator was not working because the landlord used and damaged it before they moved in.

The tenants seek an order for the landlord to replace the refrigerator in the rental unit, which the landlord agreed to complete by September 21, 2017. The tenants seek a future rent reduction of \$100.00 per month until the replacement occurs, for a period of up to one year. They also seek reimbursement of \$500.00 for lost food that they had to buy because of the refrigerator not working and \$385.00 for having to lease a working refrigerator for \$35.00 per month since November 2016. The landlord disputes the tenants' compensation claim as well as the future rent reduction, indicating that the tenants are at fault for the broken refrigerator. Although the tenants said that the technician advised them that the refrigerator issues were due to the landlord, they did not provide documentary or witness proof of same. They said that they only received a business card from the technician indicating that the refrigerator should be replaced, which the landlord agreed occurred.

Analysis

Rent Increase

Section 43 of the Act regulates rent increases and states the following, in part:

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.

I allow the tenants' application to dispute the landlord's rent increase of \$700.00 and I cancel the landlord's NRI, dated March 27, 2017. I order that the rent for the tenants' rental unit remains at \$1,400.00 per month for the remainder of this tenancy, until it is legally changed in accordance with the Act.

I find that the landlord is attempting to raise the amount of rent by 50% at \$700.00, which is above the allowable *Regulation* amount of 3.7% for 2017. I find that the landlord did not have an order from an Arbitrator, nor did the landlord apply for an additional rent increase at the RTB to raise the rent above the allowable *Regulation* amount. Since this is a continuing tenancy and no new written tenancy agreement has been signed, regardless of whether this is a fixed term tenancy or a month-to-month tenancy agreement, the landlord can only raise the rent once every 12 months by the allowable *Regulation* amount as per section 42(1) of the Act.

The landlord confirmed that the tenants have paid the correct amount of rent of \$1,400.00 per month to date, and that they did not pay any new rent increase to the landlord. Therefore, I issue no monetary order for reimbursement of rent to the tenants.

Monetary Compensation and Rent Reduction

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss the burden of proof lies with the tenants to establish the claim on a balance of probabilities. To prove a loss, the tenants must satisfy the following four elements:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I order the landlord to replace the refrigerator at the rental unit to a proper, working refrigerator as certified by a licensed technician, by September 21, 2017. If the landlord fails to do so, I order the tenants to reduce their monthly rent by \$100.00, beginning on the following month after the violation occurs, until the replacement or the proper, working order occurs. If the parties disagree as to whether the refrigerator is in proper, working order, they have leave to reapply at the RTB for determination.

As advised to the tenants during the hearing, I dismiss their claim for photocopy costs of \$30.80 and \$17.00 and registered mail costs of \$15.37 and \$15.29, because the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

I dismiss the tenants' claim for \$500.00 in food costs and \$385.00 to lease a refrigerator, without leave to reapply. I find that the tenants, as the applicants, did not meet their burden of proof, on a balance of probabilities, to show that the landlord was responsible for the refrigerator not working. The previous Arbitrator's decision specifically stated that the tenants had leave to reapply for compensation and a rent reduction if they could show that they were not at fault for the refrigerator issues and the landlord was at fault. The tenants failed to produce a report from the technician or witness testimony from the technician, indicating that the landlord was at fault for the refrigerator not working. The landlord disputed the tenants' claim, indicating that the tenants were at fault.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order that the rent for the tenants' rental unit remains at \$1,400.00 per month for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

I order the landlord to replace the refrigerator at the rental unit to a proper, working refrigerator as certified by a licensed technician by September 21, 2017. I order the tenants to reduce their monthly rent by \$100.00, beginning on the following month after the violation occurs, until the replacement or the proper,

working order occurs. If the parties disagree as to whether the refrigerator is in proper, working order, they have leave to reapply at the RTB for determination.

The remainder of the tenants' application is dismissed 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: September 15, 2017

Residential Tenancy Branch