Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL, DRI, CNC, OLC, PSF, LRE, FFT

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants' application identifying Landlord RA (the landlord) as the sole Respondent in their application sought:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties confirmed receipt of one another's dispute resolution hearing packages and written evidence packages, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Both parties agreed that the tenants surrendered vacant possession of the rental unit by November 16, 2017. Since this tenancy has ended and the landlords have vacant possession of the rental unit, the landlords withdrew their application for dispute resolution. The landlords' application is hereby withdrawn.

As this tenancy has ended, the tenants withdrew the following portions of their application for dispute resolution, which were no longer a matter of ongoing dispute for them:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

These portions of the tenants' application for dispute resolution are hereby withdrawn.

At the hearing, it became apparent that both parties had additional monetary concerns that they have not yet included in an application for dispute resolution with the Residential Tenancy Branch. I advised the parties that I could not consider these concerns about damage to the rental unit and who was entitled to the tenants' security deposit. These matters were not at issue when this tenancy was ongoing and neither party had been advised of their intention to pursue these concerns as part of the existing applications submitted by the parties.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for charges applied by the landlords that were in excess of the amounts they were legally entitled to receive on the basis of their Residential Tenancy Agreement? Are the tenants entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that this tenancy commenced by way of a written month-to-month Residential Tenancy Agreement (the Agreement) signed by the landlord and the tenants on April 21, 2017. A copy of the Agreement and a short three-item Addendum (the

Addendum) to that Agreement that the parties agreed they undertook were entered into written evidence. According to the terms of the Agreement on a standard Residential Tenancy Agreement form, monthly rent was set at $1,300.00, payable in advance on the first of each month. The landlord continues to hold the $650.00 security deposit paid by the tenants in April 2017. Although this tenancy has ended, the tenants confirmed that they have not sent the landlord a request to return their security deposit in writing to a forwarding address of their choice.

In the Addendum, also created by the landlord, the following provisions were attached to this tenancy:

1. *As per our original verbal rental agreement made prior to tenancy agreement, there will be no smoking or additional tenants allowed in the basement suite, without prior written consent and approval from the landlord, as well as an increase in rent and utilities (when or if the number of tenants/pets changes) @ $1500 per month and ½ utilities.*
2. *Also as agreed upon, rent will be due on the last day of every month for the following month. For example, rent for May 2017 will be due on the last day of April 2017…*

The tenants gave undisputed sworn testimony that the landlord began charging the tenants $1,500.00 per month as of July 2017, when Tenant DM's 15-year old daughter stayed with the tenants during her summer vacation in July and August 2017. The landlord confirmed that she considered Tenant DM's daughter as an additional tenant as per the terms of the Addendum. She said that the intent of the Addendum was to charge an additional $200.00 when and if an additional person came to live with the tenants. She said that she had discussed this provision with Tenant KC at the beginning of this tenancy, as KC had told her that some of the tenants' children might come to live with them at some point in their tenancy.

The parties agreed that the landlord initiated a process of obtaining reimbursement for 1/3 of the utilities as per the terms of their original Agreement, by advising the tenants of the total utility cost each month and requesting reimbursement of 1/3 of those costs. By July, when the landlord invoked the charges identified in the Addendum, the landlord considered the payment of the extra $200.00 per month as also covering the utilities. She said that this additional rent also included utilities.

The landlord also testified that another individual, unrelated to the tenants, was also residing with the tenants for a period of time during the summer. Tenant DM confirmed

that a female did stay with the tenants for a week and a half, which he estimated to have occurred in mid-May or early June. The landlord referred to an email or text communication with the tenants in which they stated that this individual stayed with them for a period of two weeks. Tenant DM testified that there was never any intention that this female would be staying with them on a long-term basis; she was only staying with them as a first step to recovering from challenges she was facing in her life at that time. Tenant DM said that she did not even stay with them on a full-time basis during this short-term arrangement, as she left once to return to her previous lifestyle.

Analysis

Section 43 of the *Act* reads in part as follows:

> ***43*** *(1) A landlord may impose a rent increase only up to the amount*
>
> *(a) calculated in accordance with the regulations,…*
>
> *or*
>
> *(c) agreed to by the tenant in writing…*
>
> *(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.*

I first must not that the tenants' application is not a standard dispute of an additional rent increase imposed by the landlord. This is because the landlord and tenants did sign the Addendum at the beginning of this tenancy. Clause 1 of the Addendum clearly established the intent of the parties that additional charges for rent and utilities would be applied if an additional tenant resided in the tenants' basement suite. Although the tenants applied to dispute a rent increase that exceeded the amount allowed under the *Act* and the relevant *Regulations*, it was clear from their application that this dispute narrowed to whether or not the Addendum allowed the landlord to charge an amount beyond what had been originally established upon in the Agreement. The tenants maintained that the two-month stay of Tenant DM's teen aged daughter when she was out of school for the summer did not constitute the addition of a tenant to this Agreement.

At the hearing, the landlord confirmed that she drafted the terms of the Agreement, including the original monthly rent of $1,300.00, payable in advance on the first of the month, plus 1/3 of the utilities, as well as the Addendum, that accompanied the

Agreement. She asserted that Clause 1 of the Addendum was designed to compensate the landlord an additional $200.00 if any additional occupant commenced residence in the rental unit. However, she did not specify “occupant” in Clause 1; she instead used the term, tenant. For their part, Tenant DM maintained that his 15-year old daughter was not a “tenant” in his rental unit. He gave undisputed sworn testimony that the charge applied by the landlord continued beyond his daughter’s two-month visit in July and August 2017. He maintained that the landlord had arbitrarily interpreted the Addendum in such a way as to increase the tenants’ rent, even beyond the period when his daughter was staying at the rental unit.

Both parties may very well be genuine in their understanding of what Clause 1 of the Addendum was designed to address. While a “tenant” has legal rights and responsibilities under the *Act*, an occupant has no such standing. It would be extremely unusual for a landlord to demand that a 15 year old residing with one of her parents during a summer vacation be added as a co-tenant in an existing tenancy relationship.

Under these circumstances, I find that the contract law principle of *contra proferentem* applies where there is a lack of clarity in the terms of a contract. *Contra proferentem* requires that any clause considered to be ambiguous should be interpreted against the interests of the party that requested that the clause be included. In this case, I find that there is sufficient ambiguity in the wording of Clause 1 of the Addendum to interpret it in a way that is against the interests of the landlord. In coming to this determination, I have also taken into account that the landlord took no measures to restore the monthly rental to the amount identified in the original Agreement. Rather, her actions demonstrate that she chose to seize the two-month stay of a 15-year old daughter as an opportunity to increase monthly rent on an ongoing basis.

I give little weight to the landlord’s claim that the even shorter stay of the female who departed the rental unit after 10-14 days in the rental unit has any bearing on the interpretation of the provisions of Clause 1 of the Addendum. I find that this guest was clearly not a tenant as defined under the *Act* and as described in the Addendum.
The evidence with respect to the changes to the due date of the monthly rent and the increase in the utility charge to ½ of the total utility charges for this rental property also lend support to the tenants’ claim that the landlord chose to set aside provisions of the original Agreement without authority to do so. While the tenants apparently agreed to the change in the due date, this is clearly at odds with the terms of the original Agreement, and was not contingent upon whether an additional tenant resided there.
The landlord said at the hearing that this was her first experience as a landlord, which

would appear to explain some of the conflicting and confusing provisions she incorporated in the Agreement and the Addendum.

Section 65 of the *Act* reads in part as follows:

> ***65*** *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:…*
>
> *(c) that any money paid by a tenant to a landlord must be*
>
> *(i) repaid to the tenant,..*

On a balance of probabilities, I find that the landlord has applied a rent increase that exceeded what she was legally allowed to charge and was in contravention of the terms of the Agreement and the accompanying Addendum. As such, and in accordance with paragraph 65(1)(c)(i) of the *Act*, I find that the tenants are entitled to be repaid $200.00 for each of the five months of their overpayment of rent, the period covering July until November 2017. I order the landlord to repay this amount to the tenants and issue a monetary award in the tenants' favour to that effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for their application.

The landlord also appeared to have arbitrarily decided that the extra $200.00 she was charging the tenants also included the ½ of the utilities, which Clause 1 of the Addendum would have entitled her to receive. In the event that my decision and monetary award has the effect of disentitling the landlord to utility costs that were not otherwise obtained from the tenants for the period from July until November 2017, the landlord is at liberty to reapply for reimbursement of the tenants' 1/3 portion of the utility costs for this rental property over that period.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover rent charged by the landlord in excess of that allowed under the *Act*, their Agreement and their Addendum, and their filing fee for their application:

Item	**Amount**
Recovery of 5 months of Rent (July 2017	$1,000.00

to November 2017) @ $200.00 = $1,000.00	
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$1,100.00**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The remainder of the tenants' application for dispute resolution is withdrawn.

The landlords' application for dispute resolution is withdrawn.

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: November 27, 2017

Residential Tenancy Branch