



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C-Smart Holdings Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, RR, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord’s compliance - Section 62;
2. An Order for the provision of services and facilities - Section 65;
3. An Order for a rent reduction - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the rent increase in compliance with the tenancy agreement?

Are the Tenants entitled to an order that the Landlord comply with the tenancy agreement?

Are the Tenants entitled to the provision of a security gate?

Are the Tenants entitled to a rent reduction for the lack of a security gate?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement, of combined units, started on April 1, 2011 on a fixed term to end on March 31, 2031. Rent of

\$2,150.00 was and is currently payable. The Tenants were given a notice of rent increase on a Residential Tenancy Branch approved form dated April 24, 2018 (the "Notice"). The Notice sets out that the rent will increase to \$2,236.00 as of August 1, 2018.

The Tenant argues that the Landlord cannot increase the rent during the fixed term tenancy until the last 11 years as the tenancy agreement restricts an increase by setting out that the rent will increase to \$2,500.00 for the last 11 years of the agreement. The Tenant seeks a finding that the Landlord is not complying with the tenancy agreement by issuing the rent increase under the Act.

The Landlord argues that despite the notation of a rental increase for the last 11 years and despite the fixed term, as the tenancy agreement also includes paragraph 12 that provides for a yearly rent increase the Landlord is entitled to increase the rent according to the Act. The Landlord points to policy guideline #30 that indicates that the rental increase provisions apply to a fixed term tenancy. The Landlord argues that if the rent cannot be increased during the fixed term then the provision for an increase for the last 11 years of the tenancy would also not be effective and that this should cause the entire agreement to be ineffective. The Landlord also argues that if yearly increases are not allowed, the entire agreement should be void. It is noted that the Landlord's arguments were not entirely understood.

The Tenant states that the agreement for not increasing the rent was also set out in the conditions of the sale of the building as written up by a lawyer. The Tenant provides this agreement for sale as evidence. The Tenant states that the lawyer did not draft the tenancy agreement as this had been entered into prior to the document written by the lawyer. The Tenant states that at the time of signing the tenancy agreement nobody put their mind to paragraph 12. The Tenant argues that paragraph 12 does not apply as it is in conflict with the fixed term that is covered in the Act and the tenancy agreement.

The Parties do not dispute that a previous Decision dated April 17, 2018 sets out a settlement agreement between the Parties that contains the following first term of the agreement:

1. The landlord agreed, at his own cost to a maximum of \$2,500.00, to install a security gate at the front entrance of the rental building, provided that it complies with the fire safety code and upon permit approval by the City;
 - a. The landlord agreed to submit a permit application to the City for the above installation, by June 7, 2018;
 - b. The landlord agreed to provide the tenants with price quotations for the above installation, prior to forwarding an application to the City;

The Tenant states that the Landlord has failed to provide more than one price quote for the cost of replacing a security gate, provide the permit application, and install the security gate.

The Tenant states that it received one price quote from one company indicating a price of \$3,226.55 and that this quote was only received on the date that the Landlord was to provide the Tenant with the permit application. The Tenant states that although the mutual agreement does not provide for an ultimate date for the installment of the gate it should have been within a reasonable period of time and that this period of time has since elapsed. The Tenant states that as a result of the Landlord's failure to act as agreed the Tenants continue to suffer a loss of security to their selves and their possessions contained in the unit. The Tenant claims a rent reduction of \$500.00 per month until the gate is installed. The Tenant states that the amount of compensation is difficult to quantify from the feelings of vulnerability and lack of safety. The Tenant states that when alone there is a loss of sleep from the insecurity. The Tenant states that the Landlord is acting in bad faith and has told the Tenants that the Landlord will not proceed with the replacement of the gate.

The Landlord states that it has not been able to find a security gate for less than or up to the price agreed to and that for that reason the Landlord is not required to install the gate. The Landlord states that it did obtain other quotes for the security gate and since all of them were higher than the quote provided to the Tenant they were not provided to the Tenant. It is noted that no additional price quotes were provided as evidence for this hearing. The Landlord states that prior to reaching the agreement no research was done on costs. The Landlord states that if the Tenant can find a cost up to the amount agreed they would agree to install the gate for that cost.

The Tenant states that it took them less than a half hour to obtain quotes for under \$2,500.00 but that these quotes were not shared with the Landlord as the Landlord is not discussing the matter with the Tenants. The Tenant states that they were not able to provide these quotes as evidence as there was no longer any time left for the exchange of evidence. The Tenant provides the names of the companies that provide quotes for under \$2,500.00. The Tenant states that they called the company that provided the Landlord with the quote for \$3,226.55 and this company informed the Tenants that cost in the quote could be reduced to less than \$2,500.00 if the electronics are not included and with some negotiation on the labour. The Landlord states that if the Tenants have quotes at a lower price the Landlord will be happy to move forward. The Landlord states that they cannot find a cheaper gate that would comply with the fire code. The Landlord states that the fire code requires a panic exit, an outward swinging gate and nothing in combustible materials. The Landlord states that the requirement for the gate to open outwardly they would also have to incur greater installation costs as the gate would have to be positioned in a different location as in the current location the opening of the gate would block another door.

The Landlord states that the Tenant has not suffered any losses by the lack of a security gate. The Landlord states that the gate was originally installed by the owners and that it had to be removed during the following tenancy to comply with a fire order.

The Landlord argues that to be fair in making any determination, the Tenant's own compliance with the agreement should be taken into account.

Analysis

Section 13(2) of the Act provides that a tenancy agreement must set out, inter alia, the amount of rent payable for a specified period. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Policy guideline #30 (D: Renewing a Fixed term Tenancy) provides that rent can only be increased between fixed term tenancies. Further Policy Guideline #37 provides that "A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase." Based on the undisputed evidence that the tenancy is a fixed term ending on March 31, 2031 and given the evidence of the sale agreement I find that it was the intention of the Parties to set the amount of rent payable for the entire term with a one-time increase for the last 11 years of the fixed term. As there is nothing contrary to the Act in this agreement and as rents can only be increased under the Act between fixed term tenancies I find that the tenancy agreement does not allow a yearly rent increase as provided for and calculated under the Act until the end of the fixed term. As paragraph 12 conflicts with both the allowable fixed term and the agreed upon amount of rent payable for the specified period of the fixed term I find that paragraph 12 is inconsistent with the Act and is therefore not enforceable. For the above reasons I find that the Landlord may not increase the rent contrary to the terms of the agreement and I find that the rent increase given to the Tenants is of no effect. I order the Landlord to comply with the tenancy agreement in relation to the rents agreed to for the fixed term and to not increase the rent contrary to the terms of the tenancy agreement.

Section 77(3) of the Act provides that a decision is final and binding on the parties. Section 63(2) of the Act provides that a settlement between parties may be recorded in the form of a decision or order. Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. As the Parties entered into a settlement agreement in relation to the provision of a security gate and as that settlement agreement was recorded as a decision I find that the agreement is final and binding on the Parties. Given the undisputed evidence that the Landlord has not provided a permit application to date and has only provided one quotation, I find that the Landlord has not complied with the agreement recorded in a decision that is binding under the Act.

I do not consider that the agreement for the installation of the gate to be conditional on costs. Rather I find the agreement is to install an economically reasonable gate. In other words, there was no agreement to install an expensive gate. Although there is no final completion date set out in the agreement, in order to give meaning to the agreement to provide the security gate, I find that there is an implied agreement that the security gate will be installed within a reasonable time. The Landlord's evidence of prohibitive costs is only supported by one estimate and I accept that the Tenants were able to obtain better estimates for costs. I also note that it was the Landlord who agreed to install the gate at the cost noted in the agreement. It appears to me that the Landlord is not acting in good faith towards meeting its own agreement by not putting any effort into finding a basic gate within the amount agreed to by the Landlord.

Although the Landlord argues that the Tenants have not suffered any loss by the lack of a security gate, I accept that after having a security gate for a period of time one would become reliant on the security it brings, whether the security is psychological or physical, and that the loss of the gate reasonably reduces that security. I find therefore that the Tenants have substantiated a loss with the lack of the Landlord's action to meet

its own agreement and I find that the Landlord must therefore compensate the Tenants for this loss until the gate is installed. As the Landlord made no submissions on any amount of reasonable compensation and given the Landlord apparent disregard for its own agreement and its apparent reluctance to act within a reasonable time, I find that the Tenants are entitled to a rent reduction. As the Tenants did not seek a retroactive rent increase and as the Tenants have already been without a security gate for several months I find that a future rent deduction of \$500.00 per month is a reasonable amount. I order the Tenants to reduce rent by **\$500.00** as of September 1, 2018 and for each month thereafter until the gate is installed by the Landlord. If the gate is not installed before the last day of any month, the reduction applies to the rent payable for the month that follows.

As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

I order the Landlord to comply with the rent provision terms of the tenancy agreement. I order the Tenants to reduce monthly rent payable by \$500.00 until a security gate is installed.

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: August 15, 2018

Residential Tenancy Branch