Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DNR, LRE, OLC, RR, MNDC, FF

Introduction

In the first application the tenants seek to recover money paid under allegedly unlawful rent increases and money paid pursuant to an allegedly unlawful notice requirement. They also seek relief in the nature of a compliance order, a repair order and an order restricting the landlords' right of entry, however, by the time of hearing the tenancy had ended and so only the monetary aspect of the tenants' claim remains.

In the second application the landlords claim a monetary award for cleaning of and repairs to the rental unit as well as for the tenants' use of the backyard, overuse of laundry facilities, abuse of parking privileges and loss of rental income.

The hearing of this matter took place over two days. Al parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence presented during the hearing show on a balance of probabilities that the tenant are entitled to recover rent money paid under an unlawful rent increase or notice requirement? Does it warrant confirmation of any of the landlords' claims?

Background and Evidence

The rental unit is a two bedroom suite in a house. The landlords live in the home above. There is a written tenancy agreement. The tenancy started in February 2017 for a one year term and then on a month to month basis. The initial rent was $1200.00. The parties do not agree on what the final rent was. The tenants gave notice to end the tenancy July 31, 2019 and vacated either July 14 or 19. The landlords hold the tenants' $600.00 security deposit.

In June 2017, about four months after the start of the tenancy, the landlords emailed the tenants asking that they pay $100.00 more per month starting July 1, 2017. The request set out recent utility costs for electricity, water and gas. The landlords indicated the expenses had gone up. Electricity, water and heat were included in rent under the tenancy agreement. The request was that some of the burden of the bills could be taken off the landlords by raising the amount payable by the tenants. They said it would mean that rent would be $1200.00 per month and utilities would be $100.00 and the total would be $1300.00.

According to the tenants, they respected the request of the landlords and negotiated an agreement to pay $50.00 more per month instead of the $100.00 asked for. They provide a copy of the July 2017 rent payment transfer to show they paid $1250.00 to the landlords for that month.

At hearing, despite their June 2017 email, the landlords' position was that the $50.00 increase was because they started to provide the tenants with internet access, a new service. The tenants disagree.

According to the tenants the next important event in this chronology occurred in January 2018 when the landlords texted to inform the tenants that the rent would by going up by another $50.00 effective February 1, 2018. The tenants paid the new amount of $1300.00 as of February 1, 2018.

The landlords say they had issued and served the tenants with a Notice of Rent Increase in the proper government form in October 2017 raising the rent from $1250.00 to $1300.00 effective February 1, 2018. A copy of the form was submitted as proof

The tenants say the form is a fraud and that the landlords' text in January intimates that no such official notice had been given.

The tenants say that the landlords again raised the rent, this time to $1350.00 starting July 1, 2109. They say they only received a verbal notice of the rent increase.

The landlords file as evidence a Notice of Rent Increase effective July 1, 2019 raising the rent from $1300.00 to $1332.50.

The tenants have filed a copy of their banking record showing a transfer of $1350.00 to the landlords on June 30, 2019.

The landlords say that during the entire tenancy the tenants never objected to the rent increases.

The tenants say that the tenancy agreement required them to give the landlords two months' notice to end their tenancy whereas the *Residential Tenancy Act* says they only had to give one month's notice. Because of the clause in the agreement they consider they wasted a month and should be entitled to recover that extra month's rent they paid for July because they would have moved at the end of June but for the two month clause.

The tenancy agreement contains an addendum which states:

1) No Pets.
2) No Smoking/Drugs.
3) Tenants can use the side yard (backyard is exclusively for the landlord).
4) Lease agreement of 1 year can be cancelled either by tenant or landlord by giving 2 months' notice.
5) If 2 month's notice is not given to vacate the rental suite by tenants then landlords can recover the amount of lost rent from the security deposit.

During the hearing the tenant Ms. R. expressed her desire to claim damages for wrongful entry by the landlords during the tenancy. She was informed that such a claim has not been reasonably made out in the tenants' application and so it would not determined at this hearing. She was informed that she may re-apply in that regard.

In their application the landlords claim for the $520.00 estimated cost to repair the ceiling in the second bedroom and the $400.00 estimated cost to paint it.

They also seek the $200.00 estimated cost to "deep clean" the carpet in the rental unit.

The tenancy agreement provides that the in suite laundry may be used once a week. The landlords claim the tenants overused the laundry; being a washer and dryer in a separate laundry room by using it more often than once a week. They say the tenants should pay an extra $100.00 per month over 25 months because of the extra usage and they indicate the tenants had agreed to pay it.

The tenants deny any over usage and any agreement to pay.

The landlords claim that even though tenancy agreement reserved the back yard for the landlords' exclusive use, over the duration of the tenancy the tenants had three big parties in the back yard and they should pay. The landlords claim $75.00 per party.

The landlord's final claim is that the tenancy agreement allowed the tenants to park one car on the driveway but for a significant part of this tenancy the tenants parked two cars there. The landlords seek an extra $50.00 per month over 19 months.

Analysis

Generally

It should be noted that the facts indicate, and I think the parties would agree, they enjoyed a very good relationship throughout this tenancy. They were pleasant and considerate to each other. Their families intermingled. The break in the relationship appears to have begun only at the very end, when the tenants' gave their notice to en the tenancy and the landlords began to look for tenants to replace them.

TENANTS' CLAIM

Rent Increase July 2017

Part 3 of the *Residential Tenancy Act* (the "*Act*") severely limits a landlord's power to increase rent. While a landlord may demand any rent the market will bear when securing a new tenant, once a tenant is in place with a periodic tenancy (usually a "month to month" tenancy, as opposed to a fixed term tenancy) the landlord may not impose a rent increase more often than once every twelve months and may not demand more that an increase permitted by the *Act* and Regulation.

In this case, the rent was increased in June 2017 from $1200.00 to $1250.00. The landlords intimated that it was not a “rent” increase and that the “rent” stayed the same at $1200.00 and the tenants only paid a “utility” or wifi charge of $50.00. I do not agree with that proposal. The increase was an increase in the rent. The landlords’ Notice of Rent Increase dated October 25, 2017 clearly states that the “current rent” was $1250.00 and based the allowable rent increase calculation on that rent.

This increase occurred within twelve months after the tenancy started and so, had it been an increase “imposed” by the landlords it would have been contrary to the *Act*. As well, it exceeded the 3.7% allowable rate for that year. However, it is apparent that the parties negotiated the increase and that it was agreed to by the tenants. It was therefore not an “imposed” rent increase and the tenants cannot now challenge it.

The February 2018 Rent Increase

I find that this increase, from $1250.00 to $1300.00 per month was imposed by the landlords and was accepted but not agreed to by the tenants. Even though the tenants paid the increase, they did not lose their right to challenge it.

This increase was imposed within twelve months from the last rent increase, contrary to s. 42(1) of the *Act* which prohibits a rent increase within twelve months of the last increase. By operation of s. 42(4) the rent increase in such circumstances would take effect at the earliest lawful time, in this case: July 1, 2018.

However, I find that increase was imposed informally and not by the use of the approved form as required by s. 42(3) of the *Act*. The first increase, in July 2017 was an informal one, making it not unreasonable to accept that the second increase might have been informal as well. But the landlord’s text of January 28, 2018 is most indicative. It states “… I forgot to mention that as one year has been finished so from Feb month rent will be 1300 CAD that is 4% increase in monthly rent.” This conversation is inconsistent with the idea that the landlords had already given the tenants a formal Notice of Rent Increase three months earlier.

As a result, this purported rent increase was not in accordance with Part 3 of the *Act* and was not effective to raise the rent.

Section 43(5) provides that a tenant is entitled to recover rent paid under an increase that does not comply with the *Act*. The tenants have been paying $50.00 per month since February 1, 2018 under a non-compliant rent increase and are entitled to recover that overpayment.

The July 2019 Increase

Even if it is accepted that this increase was in the approved form and given with the required notice it did not comply with Part 3 of the Act. It purports to increase the monthly rent from $1300.00 to $1332.50, however, the rent was not $1300.00, it was $1250.00 because the February 2018 increase was invalid.

The permitted increase for the year 2019 was 2.5%, thus the July 2019 increase could not exceed $31.25 for a total rent of $1281.25. I find this rent increase to be invalid.

I find that the tenants paid $1350.00 rent for July 2019.

In result the tenants are entitled to recovery seventeen months of $50.00 rent overpayment, from February 1, 2018 to June 1, 2019 inclusive for a total amount of $850.00.

They are entitled to recover the $100.00 overpayment for July 2019.

Tenants' Two Month Notice

As stated above, the addendum to the tenancy agreement provided, *inter alia*:

1) Lease agreement of 1 year can be cancelled either by tenant or landlord by giving 2 months' notice.
2) If 2 month's notice is not given to vacate the rental suite by tenants then landlords can recover the amount of lost rent from the security deposit.

A "lease agreement of 1 year" is a fixed term tenancy. Normally neither a landlord nor a tenant may end a fixed term tenancy until the end of the fixed term. That is one of the benefits of a fixed term tenancy. The *Act* has no particular provisions about ending fixed term tenancies and so the parties are free to agree as they did here, that either could end the fixed term tenancy on <u>two</u> months' notice.

After the one year fixed term of this tenancy expired and as the parties did not negotiate otherwise, this tenancy became a periodic tenancy; a month to month tenancy. As the landlords point out, paragraph 14 1) of the tenancy agreement states: "[t]he tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice."

In May 2019 the tenants were not required to give the landlords' two month's notice to end their tenancy. That requirement had died with the expiry of the one year fixed term. I dismiss their claim for loss or damage resulting from them having done so.

Bank Fees

Normally, a party's out of pocket expenses incurred in preparing for a hearing are not recoverable because an arbitrator's power to award "fees and disbursements" is limited to awarding recovery of the filing fee. I therefore dismiss this item of the tenants' claim.

LANDLORDS' CLAIM

Drywall Repairs and Painting

There is a small crack and minor chipping at a particular area a bedroom ceiling. There is no dispute but that the damage was not observed at the start of the tenancy.

The damage is minor and may have been caused by someone striking the corner of the ceiling. However, the tenants say the damage is to a portion of the ceiling located directly beneath the landlord's bathroom. They have provided video evidence to show that there has been discolouration consonant with water leakage at various locations all along the drywall taped corner of the room where the crack and chipping is located. In my view that leakage that has most likely cause the drywall to crack and chip away.

That is not damage for which the tenants are responsible and so I dismiss the landlords' claim for the cost of anticipated repairs and painting.

Carpet Steam Clean

The *Act* s. 37(2) requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Guideline #1, “Landlord & Tenant - Responsibility for Residential Premises” provides:

> The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenants’ video evidence satisfies me that the carpets were shampooed on July 14, 2019. I dismiss this item of the claim.

Overuse of Laundry

This allegation, in the face of the tenants’ denial, has not been proved on a balance of probabilities and it is dismissed.

Party Hosting Three Times

There is no dispute but that the backyard of this home had been reserved for the landlords’ use. However the tenants’ text shows that at least on one occasion the landlords’ consent was obtained for them to use it for a child’s party. It is reasonable to infer that the tenants were making use of the yard on each occasion for a child’s party with the landlord’s consent. There is no objective evidence of any complaint or opposition from the landlords at the relevant times. If there was to be a payment then that fact should have easily been corroborated by correspondence between the parties. Perhaps most indicative that the use of the yard was approved at no cost was the fact that one or both of the landlords were at least one of the parties, as shown in the photographic evidence tendered by the tenants.

I conclude that the parties were held with the landlords’ knowledge and consent at no cost. This item of the landlords’ claim is dismissed..

Parking

The tenancy agreement provides that the tenants will be entitled to parking space for one car. It is admitted that at times they parked two cars on the property.

The evidence shows that the front yard driveway is wide enough for two cars to pass comfortably. The landlords used the left side of the driveway, the side nearest the house. The tenants parked on the right side and at times parked a second car behind their first. Whether the tenants parked one vehicle on the right side or whether they parked two vehicles, one behind the other, on the right side, it would make no difference to a person parked on the left side of the driveway. That person could pass and repass up and down the driveway and enter and exit a vehicle with the same ease whether there were one or two cars parked on the right hand side of the driveway.

There appears to be no direction from the landlords taking issue with the parking but, technically, it was a breach of the tenancy agreement. However, the landlords have not show that they suffered any damage or loss or inconvenience as a result of the breach and so this item of the claim must be dismissed.

Loss of Rental Income

Not claimed in the landlords' Monetary Order Worksheet but raised at hearing by Mr. S. was the claim that they had suffered a loss of rental income because of the tenants' hostility to showings. In his view prospective tenants "would just run away" and the landlords ended up re-renting for less rent than these tenants were paying.

I have heard each side speak of the difficulties they say they had during the last weeks of this tenancy and I find the evidence insufficient for me to conclude that either the landlords or the tenants acted contrary to law or the tenancy agreement.

It is also apparent that new tenants were secured on July7, 2019 for a tenancy starting in August. That means that the landlords forewent over three weeks of opportunity to find higher paying tenants, with two of those weeks being a time after the tenants had vacated.

I dismiss this claim.

Conclusion

The tenants are entitled to a monetary award totalling $950.00 plus recovery of the $100.00 filing fee for this application.

The landlords' claim is dismissed.

In these circumstances the tenants are also entitled to recover their $600.00 security deposit, being held by the landlords pending the hearing of their application.

The tenants will therefore have a monetary order against the landlords jointly and severally in the amount of $1550.00

The tenants have brought another application (file number shown on cover page of this decision) seeking recovery of double the deposit money, as provided for by s. 38 of the *Act*. That issue was not addressed at this hearing and unless the parties otherwise resolve the issue they may expect the matter to be addressed at the hearing scheduled for that application in December.

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 30, 2019

Residential Tenancy Branch