



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, OLC, DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants March 14, 2022 (the “Application”). The Tenants applied as follows:

- For authorization to change the locks to the rental unit
- For an order suspending or setting conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a rent increase that is above the amount allowed by law
- To recover the filing fee

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive the Tenants’ evidence. The Tenants acknowledged they did not serve their evidence on the Landlord. I found the Tenants failed to comply with rule 3.14 of the Rules in relation to service of their evidence. I heard the parties on whether the Tenants’ evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Landlord was fine with the Tenants’ evidence being admitted and therefore I admitted it.

The Tenants testified that they did not receive the Landlord's evidence. The Landlord testified that they sent their evidence to the Tenants by registered mail July 02, 2022, and provided Tracking Number 959. I looked Tracking Number 959 up on the Canada Post website which shows notice cards were left regarding the package July 05 and 11, 2022; however, the package has not been picked up.

Based on the testimony of the Landlord and Canada Post tracking information, I am satisfied the Tenants were served with the Landlord's evidence in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). The Tenants cannot avoid service by failing to pick up registered mail packages. Pursuant to section 90(a) of the Act, the Tenants are deemed to have received the package July 07, 2022. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service. The Landlord's evidence is admitted.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to authorization to change the locks to the rental unit?
2. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
4. Has the rent been increase above the amount allowed by law?
5. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed on the following. There is a verbal tenancy agreement between them. The tenancy started January 01, 2017, and is a month-to-month tenancy. Rent is \$1,200.00 per month due on the first day of each month. No security or pet damage deposits were paid.

Are the Tenants entitled to authorization to change the locks to the rental unit?

The Tenants testified that the Landlord shows up to the rental unit unannounced and without warning. The Tenants said the Landlord is intimidating and they do not feel safe. The Tenants referred to their right to quiet enjoyment. The Tenants took issue with the Landlord knocking on the door of the rental unit as well as entering the rental unit without notice or permission. The Tenants testified that the Landlord has knocked on the door of the rental unit or entered without permission six times in the last three years.

The Landlord disputed that they have shown up to the rental unit unannounced without warning and been intimidating. The Landlord pointed to their evidence where they list when they have attended the rental unit. The Landlord testified that they have only attended the rental unit to do repairs, other than one time when they stopped to provide a tenancy agreement and planned to leave it at the door. The Landlord relied on text messages in evidence to show when they have attended the rental unit. The Landlord also submitted that the text messages show the relationship between the parties. The Landlord testified that the Tenants have a security camera at their door. The Landlord denied ever entering the rental unit without notice or permission and stated they have only attended the rental unit when the Tenants asked them to.

In reply, the Tenants relied on a video in evidence and a March text message between the parties.

Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

The parties agreed this issue is the same as the above issue and neither had anything to add.

Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

This issue relates to a rent increase. The Tenants confirmed they are not currently paying an illegal rent increase. The Tenants testified that the Landlord has threatened to evict them if they do not pay an illegal rent increase and sought an order that the Landlord comply with the *Act* in relation to rent increases.

The Landlord did not take issue with me ordering that they comply with the *Act* in relation to rent increases because, as explained to the parties, the Landlord is required to comply with the *Act* in relation to rent increases in any event.

Has the rent been increase above the amount allowed by law?

This issue is the same as above and the parties did not have anything to add in relation to this issue.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenants as Applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Are the Tenants entitled to authorization to change the locks to the rental unit?

Section 29 of the *Act* states:

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).

Section 70(2) of the *Act* states:

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

I am not satisfied based on the evidence provided that the Landlord is likely to enter the rental unit other than as authorized by section 29 of the *Act*.

The Landlord is permitted to attend the rental unit and knock on the door without having to comply with section 29 of the *Act*. Further, the Landlord is permitted to ask the Tenants if the Landlord can attend and enter the rental unit without breaching section 29 of the *Act*. If the Tenants do not want the Landlord to attend and enter the rental unit, the Tenants can simply tell the Landlord this and the Landlord would then have to comply with section 29 of the *Act* in relation to entering the rental unit. It seems from the Application and materials that the Tenants believe the Landlord cannot knock on their door or text them asking to enter the rental unit at a specific time on a specific date without complying with section 29 of the *Act* which is not accurate. The Landlord is only required to comply with section 29 of the *Act* when actually entering the rental unit.

I do not accept that the Landlord is intimidating the Tenants. I have reviewed the evidence provided which includes text messages between the parties and a video of the Landlord and an unknown person at the rental unit door. None of the materials show the Landlord being intimidating and in fact the text messages show the Landlord communicates with the Tenants in an appropriate manner.

I do not accept that the Landlord has entered the rental unit in breach of section 29 of the *Act* because the parties gave conflicting testimony about this, and the Tenants have not provided further independent evidence to support their testimony.

I note that the Tenants relied on a video to support their position. The video shows the Landlord and an unknown person attending the rental unit, knocking on the door and leaving an envelope on the door when the Tenants do not answer. There is nothing unusual, intimidating or suspicious about what is shown in the video. It appears the video shows the Landlord and an unknown person serving documents on the Tenants by posting them to the door which the Landlord is entitled to do.

The March text message the Tenants referred to is simply the Landlord asking if they can come by the rental unit. There is nothing wrong with the Landlord doing this. If the Tenants do not want the Landlord to come by the rental unit, they can tell the Landlord this. The Landlord would then need to comply with section 29 of the *Act* if entering the rental unit.

I find there is no basis upon which to authorize the Tenants to change the locks to the rental unit and dismiss this request without leave to re-apply.

Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

Section 70(1) of the *Act* states:

70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted].

The parties relied on the same basis for this request as the request to change the locks. I find there is no basis to suspend or set conditions on the Landlord's right to enter the rental unit because the Tenants have failed to prove the Landlord has done anything to warrant such an order. This claim is dismissed without leave to re-apply.

I again note that the Landlord must comply with section 29 of the *Act* if entering the rental unit as all landlords must.

Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

The Tenants seek an order that the Landlord comply with the rent increase sections of the *Act*. All landlords must comply with the rent increase sections of the *Act* as does the Landlord. The relevant sections of the *Act* are as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

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 payable for the rental unit;

(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...

(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.

Notice of rent increase has no effect

43.1 (1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

Has the rent been increase above the amount allowed by law?

The Tenants confirmed they are not currently paying an illegal rent increase and therefore this claim is dismissed without leave to re-apply.

Filing fee

I decline to award the Tenants reimbursement for the filing fee because they have failed to prove the issues raised in the Application. Although I have ordered the Landlord to comply with Part 3 of the *Act*, the Landlord was required to do so with or without my order.

Conclusion

The Application is dismissed without leave to re-apply other than as it relates to the order that the Landlord comply with Part 3 of the *Act* in relation to rent increases.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 18, 2022

Residential Tenancy Branch