Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, RR, RP, OLC, FFT

Introduction

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

- an order that the landlords make repairs to the rental unit pursuant to section 32;
- a determination regarding their dispute of a rent increase by the landlords pursuant to section 43;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46;
- the cancellation of the One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 11:33 am in order to enable the landlord to call into the hearing scheduled to start at 11:00 am. The tenant's agent ("**DT**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that DT and I were the only ones who had called into the hearing.

DT testified that the tenants served that the landlords with the notice of dispute resolution package and supporting documentary evidence via registered mail on July 21, 2022 to the landlords' address for service listed in the tenancy agreement. The tenants provided Canada Post tracking numbers (one for each landlord) confirming the mailing which is reproduced on the cover of this decision. I find that the landlords have been served with the required documents in accordance with the Act.

At the outset of the hearing, DT advised me that the landlords completed the requested repairs and therefore no longer required an order for the landlords to make the repairs.

She stated that the tenants still seek a retroactive rent reduction of $1,500 as compensation for the time the landlords failed to make repairs.

Accordingly, I dismiss the tenants' application for an order that the landlords make repairs.

Preliminary Issue - Effect of the Landlords' Non Attendance

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlords bare the onus to prove that the One Month Notice and the 10 Day Notice (collectively, the "**Notices**") are valid. Rule of Procedure 7.4 requires a party to attend the hearing and present their evidence for it to be considered. As the landlords did not attend the hearing, I have no evidence of theirs before me to consider when assessing the validity of the Notices. Accordingly, I find that they had failed to discharge their evidentiary burden and I order that the Notices are cancelled and are of no force or effect.

The tenants bear the evidentiary burden for the balance of the relief sought, so I must assess the validity of these claims, even though the landlords have not attended this hearing.

Issues to be Decided

Are the tenants entitled to:

1) the cancelation of rent increases;
2) a monetary order of $4,500 refunding overpaid rent;
3) a retroactive rent reduction of $1,500 as compensation for the landlord's failure to make timely repairs;
4) an order that the landlords comply with the Act; and
5) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants claims and my findings are set out below.

The tenants moved into the rental unit on May 31, 2018. They entered into a written, fixed term tenancy agreement with the landlords starting May 31, 2018 and ending May 31, 2019. Monthly rent was $1,400 and was payable on the first of each month (the "**2018 Agreement**"). The tenants paid the landlords a security deposit of $700, which the landlords continue to hold in trust for the tenants.

The parties entered into a second, fixed-term tenancy agreement starting June 1, 2019 and ending May 31, 2020, Monthly rent was $1,500 and was payable on the first of each month (the "**2019 Agreement**").

The tenants submitted a single written tenancy agreement into evidence, which captured both agreements. It is a copy of the 2018 Agreement, which was subsequently altered and initialed by the parties to change the dates of the term of the tenancy and the amount of monthly rent to the amounts and dates of the 2019 Agreement. This document indicates that the tenants were required to pay a refundable $700 "re-rent levy". However, the tenants testified that they never paid this.

1. Rent Increases

DT testified that the landlord raised the rent from $1,500 to $1,650 on March 1, 2021. She testified that the tenants never received anything in writing from the landlords regarding the rent increase, but noted that the amount of unpaid rent listed on the 10 Day Notice is $1,650. The tenants testified that this represented July 2022 rent, and that they paid this amount right after receiving the 10 Day Notice.

DT argued that the landlords improperly increased the rent from $1,400 to $1,500 and then again from $1,500 to $1,650. These increases also exceed the amount permitted by the Act and the *Residential Tenancy Regulation* (the "**Regulation**").

The tenants seek an order cancelling these increases and a monetary order reimbursing them $4,500 calculated as follows:

1) June 1, 2019 to February 28, 2021 ($100 x 21 months = $2,100); and
2) March 1, 2021 to June 30, 2022 ($150 x 16 months = $2,400).

I note that the tenants' calculation for the amount owing for March 1, 2021 to June 30, 2022 is inconsistent with their position that the rent increase from $1,400 to $1,500 is improper. I would have expected the tenants to seek $250 per month (as opposed to $150 per month) for these 16 months. In any event, the tenants have not claimed this amount and I do not find it appropriate to amend their application to increase the

amount of their claim, as the landlords would not have notice of such an amendment and could not have reasonably anticipated it.

The tenants seek an order that the landlords comply with the Act and provide written notices of any future rent increases at least three months in advance of the imposition date of the increases, and that the amount of the increase be in accordance with the Regulation.

2. Repairs

DT testified that the hot water tank stopped working on May 3, 2022. The tenants advised the landlords of this that same day. The issue was not resolved until late August or early September 2022.

She testified that the tenants were forced to boil water pot by pot and carried pots of boiling hot water from the kitchen into the bathroom daily and more than once a day in order to bathe and to maintain their personal hygiene.

They submitted an email chain between landlord CB and a plumber into evidence. It shows that CB registered the damaged hot water tank with the manufacturer's warranty program on May 13, 2022, and then sent photographs of the damaged tank to a plumber on May 25, 2022. CB and the plumber exchanged emails about what work was required and how much it would cost over the next three days. On May 28, 2022, CB asked for the plumber to attend the rental unit and repair the tank by June 3, 2022, but the plumber advised him the earliest they could replace the tank would be June 10, 2022. CB persisted, and the plumber agreed to come on June 3, 2022.

On June 3, 2022, the plumber attended the rental unit, and discovered that the tank could not be repaired and would need to be replaced. On June 6, 2022, the plumber advised the landlord that the manufacturer had approved the warranty claim on the tank, and that a new one could been ordered. Due to some missed communication, it was not until June 22, 2022 that the landlord confirmed that the plumber should order the tank and pay for expedited shipping. On June 29, 2022, the plumber advised CB that the tank would be delivered in early July 2022. No further emails have been provided.

Despite the apparent delivery date of early July 2022, DT testified that the hot water tank was not installed for a further two months. She did not know what accounted for this delay.

The tenants seek a monetary order of $1,500 in compensation for the time they were without hot water in the rental unit (roughly four months).

Analysis

1. Rent Increases

The Regulation sets a maximum on the amount of an annual rent increase that a landlord may impose. In June 2019, the maximum amount of annual rent increase was 2.5%. In March 2021, it was 0%. A rent from $1,400 to $1,500 amounts to a roughly 7% increase. The rent increase from $1,500 to $1,650 amounts to a 10% increase. Accordingly, both increases imposed by the landlords are in excess of the maximum allowable amounts set out by the Regulation.

Additionally, section 42(2) of the Act states:

> **Timing and notice of rent increases**
> 42(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 43(1) of the Act states:

> **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.

Residential Tenancy Branch (the "**RTB**") Policy Guideline 30 states:

> **D. RENEWING A FIXED TERM TENANCY AGREEMENT**
> A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. *Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.*
>
> [emphasis added]

Residential Tenancy Branch (the "**RTB**") Policy Guideline 37 states:

> **C. AGREED RENT INCREASE**
> A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. *Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant.* A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

[emphasis added]

As such, while parties pay enter into an agreement to allow a landlord to increase monthly rent above what the Regulation permits, a landlord must still give three months written notice of the increase.

Based on DT's testimony, I do not find that this occurred. The rent increases were imposed immediately. Additionally, I do not find the rent increase from $1,400 to $1,500 (which was reduced to writing and signed by the tenants in the 2019 Agreement) properly set out the increase, as it did not indicate the percentage of the increase.

For these reasons, I find that neither rent increase imposed by the landlords is valid and that they have not imposed *any* rent increase in accordance with the Act and Regulation. Accordingly, I set aside any rent increase purportedly imposed by the landlords and order that the monthly rent is $1,400. I order that the landlords comply with the Act and Regulation when imposing any future rent increases.

As such, I find that the tenants have been overpaying their rent since June 2019, and they are entitled to the return of the amount overpaid. I order that the landlord repay the tenants the $4,500 sought.

As stated above, the tenants have miscalculated their claim, as they have overpaid $250 (not $150, as the tenants have claimed) from March 1, 2021 to June 30, 2022. This amounts to a difference of $1,600. However, as they have not applied for a monetary order to recovery this amount, I make no order that the landlords repay them this amount, although I note that section 43(5) of the Act allows a tenant to deduct an improperly collected increase from their monthly rent. In this case, in addition to the monetary order set out above, the tenants may deduct $1,600 from any future months' rent.

2. <u>Repairs</u>

Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept DT undisputed testimony, supported by the documentary evidence, that the hot water tank ceased to function on May 3, 2022. I also accept their evidence that it was

not replaced until late August or early September 2022. The landlords have an obligation under the Act to repair the hot water tank once they knew it was not working.

The tenants were without hot water in the rental unit for four months. I accept that for at least part of this time, the landlord was making reasonable efforts to address the issue, including paying for expedited delivery fees. However, at times, the landlords also acted with unreasonable slowness, in particular failing to install the hot water tank for almost two months after it was delivered.

However, even if the landlords worked at a reasonable speed to replace the hot water tank for the entire time the tenants were without hot water, this would not indemnify them from a monetary order. The loss of hot water in the rental unit caused the value of the tenants' tenancy to be diminished. In the circumstances, I find that the disruption to the tenants' daily routine was significant. I find that $1,500 is appropriate compensation for this disruption, representing roughly $375 per month the tenants were without hot water. I order the landlords to pay the tenants this amount.

Pursuant to section 72(1) of the Act, as the tenants has been successful in the application, they may recover the filing fee from the landlords.

Conclusion

Pursuant to sections 65, 67, and 72 of the Act, I order that the landlords pay the tenants $6,100, representing the following:

Description	Total
Return of overpayment of rent	$4,500.00
Loss of hot water	$1,500.00
Security deposit credit	$100.00
Total	**$6,100.00**

I find that all rent increase imposed by the landlord are invalid. The tenants' monthly rent is $1,400.

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: December 14, 2022

Residential Tenancy Branch