



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes DRI, OLC, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) to dispute a rent increase, to suspend or set condition on the landlord’s right to enter the rental unit and to have the landlord comply with the Act, regulation and/or tenancy agreement.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 7, 2022. Canada post tracking number was provided as evidence of service. The Canada post history shows it was received by the landlord on December 9, 2022. I find the landlord was duly served in accordance with the Act. I have noted the tracking number on the covering page of this decision.

Issue(s) to be Decided

- Is the tenant entitled to return of rent based on an illegal rent increase?
- Should the landlord be suspended or set conditions on the landlord’s right to enter the rental unit?
- Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on March 1, 2022. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that when they entered into the tenancy agreement with the landlord the tenancy was based on two tenants and two occupants who the occupants were both their adult children who helped pay the rent. The tenant stated that their children no longer live on the property, and they had two roommates move in as this was still the original amount of people living on the property.

The tenant testified that the landlord demand they pay an extra \$500.00, which they paid this for two months because the landlord was harassing them. The tenant stated that the landlord also had the police attend who told their roommates they had 48 hours to vacate, which the police had no authority to do. The tenant seeks to recover the \$1,000.00 over payment of the rent as this is a rent increase contrary to the Act.

The tenant testified that they want the landlord to comply with the tenancy agreement as it does not restrict their rights to have additional occupants living there. The tenant stated that they only replaced the occupants that vacated with new ones to help pay the rent as this is reasonable as the residence they rent has three bedrooms.

The tenant testified that they want the landlord to give them prior notice when attending to the premises which are often unrelated to the tenancy, as it to do with the attached property that they do not rent. The tenant stated that it has be at unreasonable hours at night.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the undisputed evidence of the tenant that they paid the landlord an additional \$500.00 for two months that they had other occupants residing with them. I have reviewed the tenant agreement it does not have an occupancy clause that allows the landlord to collect additional rent. I find the landlord has breached the tenancy

agreement when they collected money they were not entitled to receive. Therefore, I find the tenant is entitled to recover the overpayment of rent in the amount of **\$1,000.00**.

I authorize the tenant to deduct the above of amount from r May 2023, rent, payable to the landlord in full satisfaction of this award.

I have reviewed the tenancy agreement and it does not limit or restrict the tenant from having roommates/occupants, nor does it require the landlord's permission. When the tenancy commenced there were 4 people in total living in the rental unit. I find it is reasonable that the tenant would be entitled to have the same amount of occupants as when the tenancy started. This would not be considered an unreasonable amount of occupants as this is a three-bedroom home. Therefore, I find the landlord must comply with the tenancy agreement and not restrict the tenant from have a reasonable amount of occupants.

In this case, I am not prepared to put restriction on the landlord's right to enter the rental unit. As I have no evidence that the landlord has enter the rental unit contrary to the Act. The evidence was that the landlord has only knocked on the door to speak to the tenant although late hours is unacceptable. This is not a breach of the Act by the landlord as the Act does not require notice to be given for entry onto the residential property.

However, the landlords contact should be limited to such things as collecting rent, serving document or speaking to the tenant about their tenancy.

Further, there is no need for the landlord to be attend the rental unit at an unreasonable time in the evening disturbing the tenant, unless it is for an emergency purpose. The landlord is cautioned if they attend the rental unit to simply harass or annoy the tenant and not a valid reason for their attendance that could be an interference with the tenant's rights to quiet enjoyment. **The landlord is not to attend the rental unit between the hours 9 PM and 8:00 AM unless for emergency purposes.**

This does not apply to the surrounding property to which the tenants do not pay to rent as the tenancy agreement is clear that this is for the landlord's exclusive use.

Conclusion

The tenant's application to recover an illegal rent increase is granted. The landlord must comply with the term of the tenancy agreement as there is no restriction for the tenant to have a reasonable amount of occupants. I have not suspended or set

conditions on the landlord's right to enter the rental unit as I have not found a breached. The landlord is not to attend the rental unit between the hours of 9 PM and 8:00 AM unless for emergency purposes.

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: April 14, 2023

Residential Tenancy Branch