Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC ASSET MANAGEMENT CORPORATION

Decision

Dispute Codes: OLC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking to force the landlord to comply with the tenancy agreement and provide services and facilities required by law with respect to the manner in which their rent has been paid for the past twenty years. The tenant was also seeking compensation for the costs associated with filing an application for dispute resolution and attending the hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and all evidence properly served has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issues to be Decided

Should the landlord be ordered to comply with the Act or agreement?

Should the landlord be ordered not to restrict services and facilities previously offered as part of the tenancy?

Is the tenant entitled to compensation for costs and losses associated with filing for dispute resolution and attending the hearing?

Background and Evidence

The parties testified that this tenancy originally began in 1993 and the current rent is $956.00. The tenant testified that for the past 20 years they have paid their rent by money order to an on-site manager.

The tenant testified that the landlord has suddenly imposed a new payment method that the tenant feels violates or changes their tenancy agreement. The tenant submitted into evidence a copy of a communication from the landlord dated January 11, 2013

addressed "*TO: ALL RESIDENTS*" requiring that the tenants must deliver or mail 12 post-dated cheques to the property management firm's head office.

The tenant's position is that this violates the existing tenancy agreement and also imposes additional cost and inconvenience onto the tenants.

The tenant stated that they wrote to the landlord objecting to the new process but did not receive a response. As a result, according to the tenant, they were forced to seek dispute resolution and are claiming these costs including lost time, postage, transportation as well as the $50.00 cost of filing the application.

The tenant seeks an order to force the landlord to comply with the existing tenancy agreement and a monetary order for their claimed costs.

The landlord testified that they needed to implement a change in how the rent was going to be accepted. The landlord stated that the tenant did not need to submit the post dated cheques, but could use another new payment process called the *"Pre-Authorized Payment Plan"* . The landlord made reference to a communication sent to the tenant dated February 20, 2013 that outlines this plan. The landlord pointed out that the Pre-Authorized Payment Plan is more convenient and less costly than the tenant's existing method of payment, which requires the tenant to physically obtain a money order from their bank. The landlord testified that, under the Pre-Authorized Payment Plan, the funds are automatically withdrawn and requires no effort on the part of the tenant.

The tenant testified that the landlord had never offered the Pre-Authorized Plan prior to the tenant filing for dispute resolution. The tenant took issue with the fact that the form to be signed authorizing this plan purports to authorize the landlord to charge a noncompliant penalty of $35.00 for NSF withdrawals.

Analysis

With respect to terminating or restricting services or facilities that were previously part of the tenancy and included in the rent under the tenancy agreement, I find that section 6 of the Act states that all of the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement. Section 6 also states that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute about the terms of the agreement.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that:

(i) are required or prohibited under this Act, or
(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

In this instance, I find that the parties contracted for a tenancy and the previous practice was to offer the tenant the opportunity and convenience of paying the rent on site. I find that this is an enforceable term of the tenancy unless changed in the manner described in section 27, below.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if:

- it is essential to the tenant's use of the rental unit as living accommodation, or
- if providing the service or facility is a material term of the tenancy agreement.

However this section of the Act does allow that a service or facility, other than an essential or material one, may be restricted or terminated provided that the landlord:

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and;
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

In this instance, I find that the landlord is seeking to impose a change in services that the tenant does not agree with. While I do find that this change is a restriction in services, I also find that it has been replaced by a method that will not significantly devalue the tenancy. Therefore, I find that the landlord has not contravened the Act by imposing the new rental collection structure.

However, in regard to the landlord's intention to require, as part of this process, that the tenant agree to pay a $35.00 fee for NSF cheques or withdrawals, I find that this would contravene the Act. Section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than $25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. However, section 7 (2) of the *Regulation* prohibits the charge of this fee unless the tenancy agreement between the parties **specifically provides for that fee**. (my emphasis)

In this instance, neither party had submitted a copy of the original tenancy agreement into evidence. However, I do accept the tenant's testimony that the parties had never agreed in the original tenancy agreement that the tenant would be responsible to pay any fee for NSF cheques or withdrawals as a term of the agreement.

In regard to the landlord's attempt to change the terms of the existing tenancy agreement to now grant the landlord the right to impose this fee, I find that section 14(1) states that a tenancy agreement can be amended to add, remove or change a term, other than a standard term, **only if both parties agree**. (my emphasis)

Accordingly, I find that the landlord may amend the manner of payment of rent without reducing the rental rate, provided the method does not impose extra costs onto the tenant. I further find that the landlord is not entitled to impose additional fees such as late payment fees or NSF fees that do not exist in the current tenancy agreement.

In regard to the tenant's monetary claim for costs associated with making the application, serving the documents and attending the hearing, I find that, with the exception of the cost of filing the application, the tenant's claims for reimbursement of transportation, time or other costs for preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed. I do, however, find that the tenant is entitled to be reimbursed the $50.00 cost of the application.

I order that the tenant deduct $50.00 from the next rental payment owed to the landlord in compensation for the cost of the application.

Conclusion

The tenant is partially successful in the application by terminating additional fees imposed by the landlord that were not part of the tenancy agreement. The landlord is permitted to alter the method of collecting rent, provided that no additional costs to the tenant results.

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: February 27, 2013

Residential Tenancy Branch