



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR OLC FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and for an Order that the landlord be compelled to comply with the Act in relation to the imposition of a rent increase that the tenant contended was not compliant with the Residential Tenancy Act, (the Act). The tenant was also seeking to be reimbursed for the cost of filing the application for dispute resolution. Despite being served in person on January 12, 2009, the respondent landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent Notice of Rent Increase in excess of that permitted under the Residential Tenancy Regulation, (the Regulation).

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is in arrears for rent owed.
- Whether the landlord had authority under the Act to impose an increase in the rent and require that the tenant pay the increase based on the Notice of Rent Increase dated September 10, 2008.

Background and Evidence

The tenant submitted into evidence a copy of a Ten-Day Notice from the landlord dated January 9, 2009 and effective January 22, 2009. The tenant testified that the rental

arrears shown on the notice were not, in fact, owed. The tenant testified that his rent has been \$585.00 plus \$10.00 for parking and should remain as such until a valid Notice of Rent Increase has been served on the tenant by the landlord. The tenant testified that the landlord had purported to be implementing an increase in rent by issuing a Notice of Rent Increase on September 10, 2008 apparently effective on January 1, 2009.

However, the tenant testified that the Notice of Rent Increase was invalid. The tenant testified that despite the date shown on the notice, it was posted on the door of his unit on September 29, 2008. The tenant pointed out that with this method, service is deemed to have been completed three days after posting. Therefore the notice was not deemed received until October 2, 2008. The tenant testified that, under the Act, a notice served on October 2, 2008, could not take effect until February 1, 2009. The tenant testified that, in addition the effective date of the rental increase shown on the notice would transpire only eleven months after the previous increase, which, according to the landlord's notice, occurred on February 1, 2008. The tenant testified that, moreover, the Notice has not been signed as is required under the Act. The tenant testified that because of the flawed notice, the rental increase cannot take effect and he is therefore not in arrears for rent. On this basis, the tenant contended that the Ten-Day Notice should be cancelled.

Analysis

The Act governs when, how and how much a Landlord may increase the rent. In regards to rent increases, section 41 states that a landlord must not increase rent *except in accordance with Part 3 of the Act* which includes sections 40, 41, 42, and 43.

Section 42 (2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. The Notice in evidence, issued by the landlord did not comply with this section. In addition, section 42(3) states that a notice of a rent increase must be in the approved form and I find that the landlord's notice had complied with this section except that the Notice was not signed. Given its

noncompliance with the Act, I find that the Notice of Rent Increase issued by the landlord is invalid.

In this situation, the tenant did not pay the increase, nor is he required to do so. In fact, situations where the tenant has paid the illegal increase, section 45(5) of the Act states that, *“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.”* I must point out that it is clear that the Act does not contemplate that a tenant would ever be required to pay an increase of rent that has not been legally implemented by the landlord via a fully compliant notice.

Given the above, I find that the Notice of Rent Increase dated September 10, 2008, is not enforceable. I order that the rent for the tenant's unit will remain at \$585.00 per month plus parking, unless and until a compliant Notice of Rent Increase is issued and properly served on the tenant by the landlord. I also find that the tenant is not in arrears for rent and that the Ten-Day Notice to End Tenancy must also be cancelled.

Conclusion

Based on the testimony, evidence and provisions of the Act and regulation, I hereby order that the Notice of Rent Increase dated September 10, 2008 issued to the tenant by the landlord is permanently cancelled and of no force nor effect. I further order that the Ten-Day Notice to End Tenancy dated January 9, 2009 is permanently cancelled and of no force nor effect. I find that the tenant is entitled to reimbursement for the \$50.00 fee paid by the tenant for this application and I order that the tenant may reduce the next rental payment in the amount of \$50.00 as a one-time abatement to recoup the cost of filing.

Dated: January 2009