



Dispute Resolution Services

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

Decision

Dispute Codes:

CNR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement, which is signed by the Tenant, that establishes that the tenancy began on August 01, 1991. The agreement establishes that the monthly rent for the rental unit will be 'the average market rent', but that the Tenant will only be required to pay subsidized rent that is based on the income of the occupants.

The Agent for the Landlord stated that subsidized rent paid by the Tenant has fluctuated throughout the tenancy. She submitted documentation to show that rent paid in 1991 was \$385.00, rent from 1992 to 1994 was \$420.00, rent in 1995 was \$191.00, rent in 1996 was \$420.00, and rent in 2007 was \$433.00. The Agent submitted this information to establish that the Tenant clearly understood that her rental subsidy was

adjusted based on her current income level. She stated that the Tenant's subsidized rent was reduced to \$299.00 in April of 2008, due to changes in her financial circumstances.

The Agent for the Landlord stated that the Landlord sent the Tenant a letter, dated September 25, 2008, which advised her to attend a rent review appointment on October 03, 2008. The letter clearly stated that if the Tenant fails to provide the documentation requested in the letter, which relates to income declaration, the rent will be increased to full market value on November 01, 2008. A copy of this letter was submitted in evidence.

The Tenant stated that she did not attend the rent review appointment on October 03, 2008 because she did not receive the notification in the mail until November 19, 2008. She stated that the October 03, 2008 appointment date on her copy has been scratched out and replaced with an appointment date of November 25, 2008. She stated that the November 01, 2008 date when the rent will be increased to full market value has been scratched out on her copy and replaced with a date of December 01, 2008. The Tenant did not submit a copy of the letter she refers to and the Agent for the Landlord stated that she does not have a copy of a letter with these dates changed.

The Tenant stated that she completed her income verification and faxed it to the Landlord on November 20, 2008. The Agent for the Landlord stated that this information was received on November 21, 2008. The Agent stated that the information was used to calculate a new monthly subsidized rent, of 675.00. Although the Agent for the Landlord feels the rent was technically due on November 01, 2008, they are only seeking the increased rent from an effective date of December 01, 2008.

The Witness for the Landlord, who is an employee of the Landlord, stated that she attempted to notify the Tenant of the new rent payment by phone, although she can not now recall if she left a phone message. She clearly recalls sending an email to the Tenant, sometime around November 25, 2008, advising her of the new rent payment. She is unable to locate the email that she sent, but she is certain that it was sent.

The Tenant stated that she did not receive a notification that her rent was increasing so she paid her usual rent of \$299.00 on December 01, 2008 and on January 01, 2009.

The Agent for the Landlord stated that a 10 Day Notice to End Tenancy, which had an effective date of January 21, 2009, was placed through the mail slot in the Tenant's front door on January 08, 2009. The Tenant stated that she located the Notice in her mail on January 13, 2009. The Tenant submitted an Application for Dispute on January 16, 2009. The Notice to End Tenancy stated that the Notice would be automatically cancelled if the Landlord received \$752.00 within five days of the date that the Tenant was deemed to have received the Notice.

\$752.00 represents the difference between the rent paid for December and January, in the amount of \$598.00, and the newly calculated subsidized rent that was due for those months, in the amount of \$1,350.00. The Tenant stated that she did not pay the outstanding rent of \$752.00 because she had not been notified that her subsidized rent had changed, and that it was not fair that she should now have to pay the rent from those months.

At the hearing the Agent for the Landlord stated that she was willing to continue the tenancy, providing the Tenant entered into an agreement to repay the outstanding rent from December and January, as well as the rent for February, which has not been paid. The Tenant was not willing to pay the outstanding rent from December and January, as she was not notified of the increase.

The Agent for the Landlord requested an Order of Possession for February 28, 2009.

Analysis

The evidence shows that this is a subsidized residential complex operated by CMHC and that the rent for these rental units is related to the tenant's income of the tenants which exempts the Landlord from restrictions related to rent increases established by the *Act*, pursuant to section 2 of the Residential Tenancy Regulation.

The evidence shows that the rent payable by this Tenant has fluctuated throughout her tenancy. I am satisfied that the Tenant was clearly aware that the amount of rent due was directly related to her income.

In the absence of evidence to the contrary, I find that the rent payments for December of 2008 and January of 2009 were properly calculated to be \$675.00. As the Tenant only paid \$299.00 in rent for each of these months, I find that the Tenant still owes \$376.00 in rent from December and \$376.00 in rent from January.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant had the legal right to deduct any portion of the rent that was due for December of 2008 and January of 2009.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due by giving notice to end the tenancy. The evidence shows that the Landlord did serve the Tenant with a 10 Day Notice to End Tenancy, at which time she was advised that she owed rent in the amount of \$752.00.

I do not accept the Tenant's argument that she is not required to pay the outstanding rent from December and January simply because she was not notified of the amount

that was due. Even if I accept that the Tenant was not properly notified that the rent had changed, that would only excuse her from paying the outstanding rent on the day it was due. It would not exempt her from paying rent that is rightfully due, which in this case is another \$752.00.

In these circumstances the Tenant made no attempt to pay the amount that was outstanding, she did not accept the Landlord's offer to enter into an agreement to repay the outstanding rent over a period of time, and she is refusing to pay the outstanding amount. I therefore find that the Tenant has failed to comply with section 26(1) of the *Act* and that the Landlord is entitled to end this tenancy pursuant to section 46 of the *Act*.

Conclusion

As I have determined that the Landlord has the right to end this tenancy. I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, that is effective at 1:00 p.m. on February 28, 2009.

I find that the Tenant's application is without merit, and I dismiss the Tenant's application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.