

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *CNR.*

Introduction

This hearing dealt with the tenant's application to cancel the notice to end tenancy for unpaid rent, pursuant to section 46 of the *Residential Tenancy Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues

Should the notice to end tenancy for unpaid rent be set aside?

Background and Evidence

The tenant testified that the tenancy began sometime in 1990. There is no written tenancy agreement. Both parties agreed that the rent was \$350.00 payable on the first of the month and included utilities.

The tenant paid \$350.00 for February 2009. However, on February 03, 2009, the tenant received a notice to end tenancy for non payment of rent.

The landlord testified that sometime at the end of October 2008, he had served a notice of rent increase on the tenant. The rent increased to \$450.00 effective February 01, 2009. The landlord stated that the tenant did not pay the increased rent of \$450.00 and therefore owed the landlord \$100.00 for February 2009. The tenant stated that she did not receive a notice of rent increase and therefore she did not know that the rent had been increased.

Analysis

Pursuant to Section 42 of the *Residential Tenancy Act*, a landlord must give a tenant notice of a rent increase at least three months before the effective date of the increase; and the notice must be in the approved form. The amount of the rent increase per year is also governed by the legislation.

The parties agree that the tenant paid rent for February 2009 in the amount of \$350.00. However, they disagree about the rent increase. The tenant stated that she never received a notice of rent increase, whereas the landlord stated that he had served one on the tenant.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof on a balance of probabilities, and the claim must fail. The landlord did not submit into evidence a copy of the notice of rent increase. Therefore the landlord has not met the burden of proof that the tenant was served with the notice.

Since the tenant paid rent for February and March 2009, I find that the notice to end tenancy for unpaid rent was not valid. Pursuant to Section 46 of the *Residential Tenancy Act*, I grant the tenant's application to cancel the notice to end tenancy. The notice to end tenancy is set aside and the tenancy will continue.

Conclusion

The notice to end tenancy for unpaid rent is hereby cancelled.

Dated March 23, 2009.

Dispute Resolution Officer