



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNR, CNC, FF

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, to cancel a Notice to End Tenancy for Unpaid Rent, to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on April 1, 2008. The Landlord at that time was one of the executors of the estate of the owner who was deceased. The Tenant claimed that rent was to be \$650.00 per month but that she was given a reduction of \$100.00 by the former Landlord in exchange for vacuuming the hallways of the rental property.

The Landlord took over the rental property on August 27, 2009. She claimed that she was told by the previous Landlord (prior to taking possession) that he had told the Tenant that her services as a caretaker would no longer be required because she was not performing her duties properly and that as a result, she would no longer be entitled to a rent reduction. The Landlord also claimed that in response, the Tenant told the former Landlord that she would be moving out on August 26, 2009 because she could not afford to pay more rent. Consequently, the Landlord said that she was surprised to discover on August 26, 2009 that the Tenant did not move out and did not intend to move out.

The Landlord said that she also told the Tenant on August 26, 2009 that her services were not required and that if she stayed her rent would be increased to \$800.00 (as of September 2009) and she would also have to pay a security deposit. The Landlord claimed that the Tenant agreed and signed the tenancy agreement with the Landlord's witness present. The Landlord claimed that despite the Tenant's agreement, she paid \$554.00 for September 2009 and \$550.00 for October 2009. The Landlord said her witness served the Tenant in person on September 6, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 6, 2009.

The Tenant denied that she was a caretaker. The Tenant argued that the Landlord's previous caretaker resided in the rental unit before her and that he had an addendum to his tenancy agreement setting out the duties for which he was responsible whereas she did not have an agreement. The Landlord argued that the Tenant's (previous) tenancy agreement had a notation written by the former Landlord on the first page that stated, "Tenant to keep place clean." The Landlord claimed that the former Landlord told her that this meant the Tenant was to clean the whole rental property and not just vacuum the hallways.

The Tenant argued that she felt pressured to sign the new tenancy agreement on August 26, 2009 because the Landlord told her she would have to move out in 4 days if she did not pay \$800.00 per month. The Tenant said she did not know her rights to dispute the rent increase at the time. She also claimed that the previous caretaker's rent was reduced from \$625.00 therefore she offered to pay the Landlord and extra \$100.00 per month. The Landlord denied that the Tenant offered to pay \$650.00 per month or that she told the Tenant that she would have to move out in 4 days. The Landlord also denied the Tenant's allegation that she had physically intimidated the Tenant and argued that this was unreasonable given that she is 77 years of age, under 5 feet tall and weighs 120 pounds. The Landlord's witness also denied that the Landlord had threatened the Tenant or was otherwise intimidating.

The Landlord's witness also gave evidence that the former Landlord told both himself and the Landlord what the Tenant's duties were supposed to be but that she wasn't doing them and that other tenants in the rental property were complaining. He also recalled that the former Landlord told himself and the Landlord that the Tenant would be leaving because she could not afford a rent increase. The Landlord also relied on a witness statement from the former Landlord who claimed that the Tenant received a reduced rent "in exchange for caretaking duties."

Analysis

Section 52 of the Act says that in order to be enforceable, a Notice to End Tenancy when given by a Landlord must be in the approved form. I find that the One Month Notice to End Tenancy for Cause dated August 27, 2009 is not on an approved form. That Notice is on an old form that refers to incorrect sections of the Act. Consequently, I find that the One Month Notice is invalid and unenforceable.

The Tenant argued that she was coerced into signing the tenancy agreement on August 26, 2009 which provided for a new rent of \$800.00. The Tenant claimed that she believed she would have to move within 4 days if she did not agree to sign the tenancy

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agreement. The Tenant also claimed that the increase in rent was oppressive given that her rent was \$550.00. The Tenant admitted that her rent was reduced in exchange for her doing vacuuming but claimed that she offered to pay \$650.00 per month if the Landlord no longer wanted her to do those duties.

Firstly, I find that there is no evidence that the Tenant's rent was reduced by \$100.00. I also find that there is no evidence to corroborate the Tenant's argument that the former caretaker's rent was reduced from \$675.00. That tenancy agreement simply says that rent is \$675.00 per month and that the caretaker would be compensated a further amount of \$12.00 per hour for any extra work (not included on the addendum). Similarly, the Tenant's tenancy agreement simply said rent is \$550.00 per month. Consequently, I cannot conclude that the Tenant's rent before being reduced would have been \$650.00 per month. For the same reasons, I am unable to conclude (that without a reduction for cleaning services), an increase of rent to \$800.00 is oppressive or unfair.

I find that the Tenant was supposed to be carrying out **some** of the caretaking duties on behalf of the former Landlord and in particular, I find that she was expected to do more than simply vacuum. I make this finding having regard to the former Landlord's written statement and notation on the tenancy agreement which indicates that the Tenant was expected to clean the whole rental property. The Landlord also provided a written statement from another tenant of the rental property who claimed that he believed the Tenant was also responsible for dusting, cleaning windows and general cleaning and had done so for a short while. Consequently, I find that the Tenant's rent was probably reduced by the former Landlord by more than \$100.00 per month in exchange for her cleaning services.

Secondly, I find that there is insufficient evidence that the Tenant was coerced into signing the tenancy agreement. In particular, I find that the former Landlord advised the Tenant around the beginning of August 2009 that she would no longer be eligible for a rent reduction once the new Landlord took over at the end of that month. The Tenant did not dispute this evidence. Consequently, I find that the Tenant knew that the rent would be increased prior to the Landlord mentioning it to her on August 26, 2009 and that she had an opportunity to decide what to do or to investigate the matter further. Given the corroborating evidence of the Landlord and her witness, I also find that the Landlord did not tell the Tenant she would have to move out in 4 days if she did not sign the new tenancy agreement. I also find that there is no evidence of any other kind of intimidation or coercion on behalf of the Landlord.

As a result, I find that the Tenant agreed to sign the tenancy agreement on August 26, 2009 (probably with some reluctance) but was not coerced into it. I also find that there is insufficient evidence that the agreement was unconscionable or oppressive and as a



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result, I find that it is enforceable. Consequently, I find that there was not an illegal rent increase. I further find that the amount of \$800.00 was due on August 31, 2009 for September 2009 rent but that the Tenant paid only \$550.00. For that reason, I find that there are no grounds for cancelling the 10 Day Notice to End Tenancy for Unpaid Rent dated September 8, 2009 and the Tenant's application is dismissed. The Landlord did not apply for any orders.

Conclusion

The Tenant's application is dismissed. 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: October 27, 2009.

Dispute Resolution Officer