



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, DRI, FF

Introduction

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request to have a Notice to End Tenancy cancelled, and a request disputing a rent increase. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for this dispute resolution application.

Background and Evidence

The applicant testified that:

- The landlord gave him a rent increase in September 2008 of \$65.00 per month.
- The notice the rent increase was not in the proper form, and was more than the allowable rent increase at that time.
- He paid the rent increase for 15 months before discovering that the increase had been illegal.
- When he discovered that the increase was illegal, he deducted the amount of the overpayment from the rent owed and offered to pay the \$25.00 balance to the landlord.

- The landlord refused the \$25.00 and instead gave the 10 day notice for non-payment of rent which is now in dispute.

The applicants therefore request an order that he be allowed to deduct the overpaid rent from the amount due, and that the Notice to End Tenancy be cancelled.

The respondent testified that:

- At the time that the \$65.00 rent increase was given to the tenant she was not managing the property.
- The tenants signed the bottom of the notice of rent increase and therefore it is her belief that, by doing so, he had agreed to the rent increase.
- She did not agree to deduct any overpayment from the rent, feeling that the decision on whether the rent increase was illegal should be made by the Residential Tenancy Branch, and therefore she gave a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant did not offer to pay the extra \$25.00 over and above the amount he was claiming as overpayment of rent.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that the tenant's application be dismissed.

Analysis

It is my finding that the notice a rent increase given to the tenant was not in the proper form and exceeded the amount of rent increase allowable under the act. It is also my finding that signing the bottom of the notice of rent increase does not mean that the tenant agreed to the rent increase, it simply acknowledges that he had received the rent increase.

Therefore it is my decision that the tenant has overpaid the rent by \$65.00 for a 15 month period for a total of \$975.00. The amount of rent outstanding at the time of the application is therefore \$1000.00, as a further \$65.00 must be deducted off both the months of



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December 2009 and January 2010. Therefore, after deducting off the \$975.00 overpayment, this leaves a total of \$25.00 outstanding to the end of January 2010.

It is also my finding that although the landlord claims that the tenant did not offer to pay the outstanding \$25.00 balance, there is a possibility that the tenant did offer to do so.

Therefore although there is still \$25.00 outstanding that the tenant must pay for the month of January 2010, I am not willing to end this tenancy for that small amount.

At the time of the hearing, February 2010 rent was also still outstanding, however since this Notice to End Tenancy was given for rent outstanding for the month of December 2009 and January 2010, February 2010 rent is not an issue at this hearing.

Conclusion

The 10 day Notice to End Tenancy for non-payment of rent dated January 7, 2010 is hereby cancelled and this tenancy continues. I further order that the landlords bear the \$50.00 cost of the filing fee that the tenants paid for this dispute resolution hearing, therefore since rent outstanding to the end of January 2010 at this time totals \$25.00, I have set off that amount against the \$50.00 filing fee, and the tenants may therefore deduct the remaining \$25.00 from future rent payable to the landlords.

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 16, 2010.

Dispute Resolution Officer