

## **DECISION**

Dispute Codes

DRI, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute an additional rent increase and for an Order for the landlord to make repairs to the unit, site or property.

The tenant served the landlord with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to an order for the landlord to repair the rental unit?

### Background and Evidence

This month to month tenancy started on October 13, 2009. The tenant signed a tenancy agreement on October 10, 2009. Rent for this unit is \$500.00. The tenant paid a security deposit of \$250.00 on October 10, 2009.

The tenant testifies that the landlord increased his rent by \$250.00 per month to \$750.00. He claims that two days after signing the rental agreement a letter went out to all the tenants about a rent increase. The tenant did not agree with this additional amount as he had signed a tenancy agreement that stated the rent would be \$500.00 for one year. The tenant agrees that

he has only paid rent for March, 2010 of \$150.00 as he is awaiting the outcome of the hearing to determine how much rent he must pay each month.

The tenant testifies that when he took over the tenancy the agreement stated that he would have a fridge and stove. The tenant states he did not receive these items until approximately two months ago. The tenant also claims the landlord has not put covers on the heaters or electrical sockets; there is no light in the dining room and no doors on the bedroom and bathroom. The tenant seeks an order for the landlord to carry out these repairs to the rental suite.

The landlord testifies that the tenant signed a tenancy agreement with the building manager whose employment ended on October 02, 2009. The landlord states that this agreement is therefore invalid. The landlord also states that the tenant was advised of this and also advised that the monthly rent is now \$750.00 not the \$500.00 on his tenancy agreement. The landlord claims the tenant accepted this rental increase and paid \$750.00 for November and December, 2009. The landlord claims the tenant paid \$500.00 in January 2010 and a 10 Day Notice to End Tenancy was served on the tenant on January 31, 2010. This Notice indicates the tenant owes \$250.00 for the balance of rent for January, 2010. The landlord claims the tenant was late paying rent for February and March, 2010. The landlord claims the tenant set precedence by paying the rent of \$750.00 for November and December, 2009. The landlord requests an Order of Possession and a Monetary Order for unpaid rent.

The landlord testifies that the rental unit was renovated before the tenant moved in and the tenant was aware that the landlord was purchasing the stove and fridge. The landlord claims that a lot of upgrades were done to the building which is why the rent was increased. The landlord claims the tenant held parties at his unit with undesirable persons attending and it was these people who caused damage to light sockets and electrical fittings.

#### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; I find the tenancy agreement in place to be a valid document which the tenant signed in good faith. It was not the fault of the tenant if it was the previous building manager who signed the tenancy agreement with him. Section 14 of the *Act* states:

**14** (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this *Act*;

With this in mind I find the landlord changed a standard term of the tenancy agreement by increasing the rent by \$250.00 per month. Section 42 of the *Act* states a landlord must not impose a rent increase for at least 12 months and must give the tenant a notice of rent increase at least three months before the effective date of the increase.

The landlord argues that the tenant agreed to the increase and paid this increased rent of \$750.00 for October and November, 2009; however, I find the landlord did not comply with section 14 of the *Act*. I therefore find pursuant to section 43(5) of the *Act* that the tenant overpaid his rent for October and November, 2009 and may deduct the increase paid from outstanding or future rent owed in order to recover the increase.

I find, the tenant paid rent of \$150.00 for March, 2010; as the tenant overpaid his rent for October and November, 2009 by \$500.00 for these two months. He therefore has a balance owed to him of \$500.00 pursuant to section 43(5) of the *Act*. Consequently, I find the tenant may use this amount to cover his rent for March, 2010 and now has an outstanding balance owed to him by the landlord of \$150.00. The tenant is entitled to withhold this amount of \$150.00 from the next rent payment due to the landlord on April 01, 2010.

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the *Act* when rent or utilities are in arrears. The determination to be made is whether the Notice was validly issued under the *Act*. I find the landlord served the tenant with a 10 Day Notice to End Tenancy on January 31, 2010. I find the amount of rent the landlord states the tenant owes on this notice was the amount of the invalid increase as determined above. The landlord served the tenant with another 10 Day Notice to End Tenancy for unpaid rent on February 22, 2010 stating the amount owed was \$1,000.00. I find that at the time this Notice was issued the tenant did not owe \$1,000.00 in unpaid rent but was instead owed \$500.00 in overpayment of rent. The

tenant paid rent of \$500.00 for February 2010 although part of this rent was paid late by the tenants own admission as he was unsure at this point what he had to pay in rent. I therefore determine that both 10 Day Notices are invalid and both Notices are therefore cancelled.

I further order that the tenants rent will remain at \$500.00 per month until November 01, 2010.

With regard to the tenants claim seeking an Order for the landlord to repair the unit; I find the tenant has not provided any evidence to support this section of his claim. Consequently this section of his claim is dismissed with leave to reapply.

### Conclusion

The tenants' application to dispute an additional rent increase is upheld. The tenants rent will remain at \$500.00 until November 01, 2010. I further Order the tenant to deduct \$150.00 from his rent due on April 01, 2010.

The tenants' application for an Order for the landlord to make repairs to the unit is dismissed with leave to reapply.

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: March 22, 2010.

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Dispute Resolution Officer