

DECISION

Dispute Codes DRI, CNR, FF

Introduction

A substantial amount of documentary evidence and written arguments has 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 section 46 Notice to End Tenancy cancelled, and a request to have the respondents bear the \$50.00 cost of the filing fee that was paid for the dispute resolution application.

Background and Evidence

The landlords have argued that:

- The Residential Tenancy Branch has no jurisdiction over this matter because under Section 2 of the Residential Tenancy Regulations, they are exempt from the requirements of sections 41, 42, and 43 of the Residential Tenancy Act.
- Since they are exempt from sections 41, 42, 43 of the Residential Tenancy Act, they are at liberty to determine how much rent the tenant must pay.
- In this case they suspect that the tenant has more people living in the rental unit when she has declared, and therefore they are refusing to submit her request for rental subsidy.

- Therefore in the absence of any subsidy they are charging the full market rent, of \$780.00 per month, as declared on the tenancy agreement.
- Since the tenant has not paid the full market rent of \$780.00 for the month of April 2010, a Notice to End Tenancy was issued.

The landlords are therefore requesting that the Notice to End Tenancy be upheld and an Order of Possession be issued.

The tenant argued that:

- She does qualify for a subsidy and therefore should not have to pay the full market rent.
- She has supplied all the information required under the tenancy agreement to justify a rent subsidy; however the landlord has refused to consider the information.
- She does not have any extra people living in the rental unit, and the landlord has even been in to do an inspection and had the chance to verify whether or not there are extra people living in the rental unit.
- The landlord has no evidence that there is an extra person living in the rental unit.

The applicant is therefore requesting that the Notice to End Tenancy be cancelled as it is her belief that rent has been raised without justification.

Analysis

The landlords are correct that they are exempt from the rent increase sections of the Residential Tenancy Act. When the amount of rent payable by a tenant is based on a percentage of their income, the landlord must be free to change the amount of rent payable by the tenants if their income increases or decreases, and therefore they are not bound by the rules set out in the Act when raising the rent; however the landlords are still bound by their contractual obligations under their tenancy agreements and therefore although the Residential Tenancy Branch may not have jurisdiction over the amount by which the rent is raised, the Residential Tenancy Branch does have the

authority to determine whether or not the landlords have met their obligations under the tenancy agreement.

In this case, Section 18(a) of the tenancy agreement states:

The approved economic rent for the rental unit is \$980 a month. The tenant is responsible for the full economic rent as stated above or the tenants rent contribution (30% of gross income) if eligible for rent subsidy, whichever is higher. **Note:**(Although this state's "whichever is higher" it is my finding that that is most likely a typographical error, because the practice has been to charge whichever is lower.)

Therefore it is my finding that, if the tenants are eligible for a rent subsidy, they are only contractually obligated to pay 30% of their gross income; however in this case we do not know if the tenants are eligible for a rent subsidy because the landlord has chosen not to submit the tenant's application for a rent subsidy.

The landlord's reason for choosing not to submit the tenant's application for a rent subsidy is very vague. The landlord stated that they suspect that the tenant may have extra people living in the rental unit. The landlords further stated that they do not have proof that there is an extra person living in the rental unit however they believe they have reasonable grounds to suspect that there is.

It is my decision that the landlords have not met their obligations under the tenancy agreement. By failing to submit the tenant's application for rent subsidy they are unable to show whether the tenant does or does not qualify for a rent subsidy. Therefore the landlords have also failed to meet the burden of proving that the tenant is obliged to pay the market rent. Therefore I will be setting aside the Notice to End Tenancy.

If the landlords believe they can show that there is an unreasonable number of occupants in the rental unit they do have the right to give a 1 month Notice to End Tenancy under section 47, or alternatively if they do determine conclusively that there is

an extra person living in the rental unit, they certainly have the right to include that person's income in determining the tenants rental contribution.

Conclusion

The Section 46, 10 day Notice to End Tenancy dated April 6, 2010 is hereby cancelled and this tenancy continues. I further order that the landlords bear the \$50.00 cost of the filing fee that was paid by the applicant, and therefore the applicant may make a one-time \$50.00 deduction 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: May 26, 2010.

Dispute Resolution Officer