

Decision

Dispute Codes: DRI, CNL, OLC, FF, O

Introduction

This is the Tenant's application to dispute an additional rent increase; to cancel a Notice to End Tenancy; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Issue(s) to be Decided

- Is the Tenant paying an additional rent increase of 6.7% to the Landlord?
- Should the Notice to End Tenancy issued April 21, 2010, be cancelled?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant gave the following testimony:

The Tenant is seeking to cancel the Notice to End Tenancy (the "Notice") issued April 21, 2010, because the Tenant believes the Notice was issued in retaliation for the Tenant refusing to pay a 6.7% rent increase. The Tenant stated that monthly rent was \$1,600.00 and the Landlord sought to increase it to \$1,750.00. The Tenant testified that when he refused to pay the additional rent increase, the Landlord issued the Notice to End Tenancy. The Tenant provided copies of e-mails between the Landlord and the Tenant in evidence.

The Tenant questioned the terms of the tenancy agreement. The Tenant stated that the tenancy agreement was vague as to whether it was a one year term lease, or a month-to-month tenancy. A copy of the tenancy agreement was entered in evidence.

The Tenant provided a copy of the Notice issued April 21, 2010, with an effective end-of-tenancy date of June 30, 2010, in evidence.

The Landlord gave the following testimony:

The Landlord testified that she requires the rental unit to be vacant so that she can renovate the rental unit in a manner that requires the rental unit to be vacant. The Landlord testified that she intends to install new kitchen cabinets; install new floors; remove a patio door; and paint the entire rental unit. The Landlord expects these renovations to take approximately 2 months. The Landlord provided a copy of a quotation from a Cabinet Maker, dated May 8, 2010.

The Landlord provided a copy of the Notice to End Tenancy issued at some point after the April 21, 2010 Notice (undated), with an effective end-of-tenancy date of July 1, 2010.

Analysis

The tenancy agreement is vague with respect to whether it is a one year lease or a month-to month tenancy:

1. The tenancy agreement states the tenancy is “for the term of one year commencing June 1, 2009”. There is no end of lease date noted in the tenancy agreement.
2. Paragraph 4 of the tenancy agreement states “The Tenant will peaceably deliver up possession at the end of the said lease term and permit the Landlord after

notice of termination has been received to show the premises to prospective tenants”.

3. Paragraph 9 of the tenancy agreement states “Notice of intention to vacate at the expiration of this Tenancy Agreement must be delivered in writing to the Landlord or his manager on or before the thirtieth (30) day preceding the said expiration date”. There is no expiration date stipulated in the tenancy agreement.
4. Paragraph 16 of the tenancy agreement states “if the Tenant shall hold over after the expiration of the term hereby granted and the Landlord accepts rents, the new tenancy created shall be a tenancy from month to month upon the same terms and conditions as this lease.”

Fixed term tenancy agreements must state the date the tenancy ends, and whether the tenancy may continue as a periodic (month-to-month) tenancy or for another fixed term after that date, or whether the tenant must vacate the rental unit at the end of the fixed term. If the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy with the standard terms and conditions. The standard terms and conditions are found in the Schedule of the Residential Tenancy Regulation. I find that this tenancy is a month-to-month tenancy with the standard conditions. A copy of the Schedule is enclosed with this Decision.

I note that the rent increase requested by the Landlord is a 9.38% increase. The current allowable rate of a rent increase is 3.2%. The Landlord’s notice of an additional rent increase was sent to the Tenant via e-mail on April 7, 2010. It is not in the approved form, and is for more than is allowed under the Act. Therefore the notice of an additional rent increase is not valid. Monthly rent remains at \$1,600.00 until the Landlord provides the Tenant with a Notice of Additional Rent Increase in the approved form, and in accordance with the provisions of Sections 41, 42 and 43 of the Act. I note that the Tenant is not paying the additional rent.

Neither of the Notices to End Tenancy entered in evidence are in the approved form.
Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Therefore, I find the Notice to End Tenancy issued April 21, 2010 is of no force and effect. The Tenant's application to cancel the Notice is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord.

Conclusion

The notice of an additional rent Increase is not valid. Monthly rent remains at \$1,600.00 until the Landlord provides the Tenant with a Notice of Additional Rent Increase in the approved form, and in accordance with the provisions of Sections 41, 42 and 43 of the Act.

The Notice to End Tenancy issued April 21, 2010 is cancelled. The Tenancy remains in full force and effect until it is ended in accordance with the provisions of the Residential Tenancy Act.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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.

June 15, 2010

Date of Decision
