

DECISION

Dispute Codes CNR OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent, to obtain an Order to have the Landlord comply with the Act, and to recover the cost of the filing fee from the Landlord for this application .

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 2, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the notice to end tenancy and have the Landlord comply with the Act in accordance with sections 46 and 32 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the parties entered into a written tenancy agreement for a month to month tenancy effective April 1, 2001. The Tenant's rent has been subsidized and based on the Landlord's testimony the current market value rent is

\$901.00. The Tenant paid a security deposit of \$522.00 on March 23, 2001, based on market value.

The Tenant testified that her subsidized rent was \$183.00 per month however in April 2010 she was told by the Landlord that her rent would be increased to \$213.00 effective May 1, 2010. In June 2010 the Landlord called her to advise her that her subsidy was being withdrawn, that her rent would be market value, and the Landlord requested the Tenant agree to move out of the rental unit. During this conversation the Tenant told the Landlord that she was not able to pay the market rent nor was she able to move at this time. The only thing she received from the Landlord in writing was the 10 Day Notice to End Tenancy and the rent receipts. The Tenant pointed out that she has been paying her rent by money order in the amount of \$213.00 since May 1, 2010; however the Landlord issued the August 2010 rent for only \$183.00, as supported by her evidence which included copies of rent receipts.

The Landlord testified and advised that during the month of February each year a subsidy package and application is provided to each tenant. The Landlord assisted this Tenant in completing her application in February 2010 and provided the Tenant with a document which listed her subsidized rent at \$183.00. The Landlord confirmed that the Tenant's subsidy was \$213.00 less \$30.00 for a hydro subsidy for a net subsidized rent of \$183.00. She confirmed she has been receiving \$213.00 from the Tenant since May 1, 2010, and the additional \$30.00 per month has been applied to the Tenant's alleged rental arrears. The Landlord confirmed she did not provide evidence in support of her testimony regarding alleged rental arrears.

The Landlord confirmed that she called the Tenant in June 2010 and requested that the Tenant agree to move out of the rental unit because the Tenant's subsidy was being pulled. The Landlord argued that a written letter was posted to the Tenant's door on June 23, 2010 advising the Tenant that she is required to pay the market rent. The Landlord confirmed the written notice did not list what the dollar amount was for the

market rent. A 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on July 2, 2010, when the Tenant failed to pay the market rent.

The Tenant refuted the Landlord's testimony and argued that the Landlord never issued a written notice that the subsidy was being pulled. She confirmed she received the telephone call and the 10 Day Notice to End Tenancy. She also refuted the Landlord's claim that there are rental arrears. She has lived in this unit for nine years and has never one received a notice that there was outstanding rent. She was not sure why she requested an Order to have the Landlord comply with the Act and would like to withdraw this request if it did not apply to her situation.

Analysis

All of the testimony and documentary evidence was carefully considered.

A significant factor in my considerations is the credibility of the testimony. I am required to consider the testimony not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess this evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. Based on the aforementioned, I find that the Landlord failed to provide sufficient evidence to prove a written notice was issued and served to the Tenant to notify her that the subsidy had been pulled, when the new rent was payable and for what amount. Nor is there sufficient evidence to support there are rental arrears. That being said, I do find that the evidence and testimony supports that the Landlord accepted a payment of \$213.00 for rent and issued an incorrect receipt stating that a payment of only \$183.00 was received.

Upon review of the 10 Day Notice to End Tenancy for unpaid rent issued July 2, 2010, I find the Notice not to be completed in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I find the Landlord has failed to

provide sufficient evidence to support issuing the 10 Day Notice to End Tenancy on July 2, 2010 and the Notice is hereby cancelled.

The testimony confirms the Tenant has paid \$213.00 for May, June, July, and August 2010, while the subsidized rent is \$183.00. There is insufficient evidence to prove there is an outstanding balance for rental arrears therefore I find the Tenant has overpaid her rent by \$120.00 (4 x \$30.00). This overpayment is to be deducted from the Tenant's required rent for September 2010. The Landlord is hereby ordered to issue amended receipts which display the actual amount paid by the Tenant.

If the Tenant no longer qualifies for a subsidy and the Landlord is wanting to terminate this tenancy, then the Landlord is required to serve the Tenant with written notice of the withdrawal of subsidy included the amount of market rent required plus a 2 Month Notice to End Tenancy for loss of subsidy, in accordance with section 49 of the Act. If the Landlord issues the 2 Month Notice the Tenant is entitled to compensation for receipt of this notice in accordance with section 51 of the Act.

The Tenant has been successful with her application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy issued July 2, 2010, is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the overpayment of rent (\$120.00) and the \$50.00 filing fee from her September 2010 rent leaving the total rent payable for September 2010 at \$13.00. (\$183.00 – 120.00 – 50.00)

The Landlord is HEREBY ORDERED to issue the Tenant amended receipts which reflect the actual amount paid.

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: August 26, 2010.

Dispute Resolution Officer