



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CLN, DRI, ERP, FF PSF

Introduction

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

I also gave the applicant the opportunity to testify at the hearing.

The respondent was served with notice of the hearing by hand on October 23, 2010, but did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is an application to dispute a notice of rent increase, and a request to cancel a Notice to End Tenancy, that has been given for landlord use.

The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

On the application the applicant had also request an order to make emergency repairs, and an order for the landlord to provide a service or facility required by law, however she did not pursue these portions of the claim at the hearing.

Background and Evidence

The applicant testified that:

- The landlord gave her a hand written note stating that her rent would be going to \$950.00 starting October 1.
- The rent presently is \$800.00 per month, and she has only been in the rental unit since April 1, 2010.
- When she told the landlord she would not pay the rent increase, he gave her a two-month Notice to End Tenancy for landlord use which stated that she was getting this notice because she would not pay the \$150.00 per month extra rent.

The applicant is therefore requesting an order that the rent increase be denied, and is asking that the two-month Notice to End Tenancy be cancelled.

Analysis

The requirements under the Residential Tenancy Act for giving a rent increase are as follows:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case the handwritten notice of rent increase given by the landlord is not a valid notice as it does not meet the above requirements, and therefore is my decision that this rent remains and \$800.00 per month.

It is also my decision that the Notice to End Tenancy given for landlord use, has not been given in good faith.



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The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

Right on the notice, the landlord has stated that it's been given because the tenant failed to pay the \$150.00 rent increase, and therefore the landlord obviously has an ulterior motive for ending this tenancy.

Further the landlord has not even properly filled out the Notice to End Tenancy, and has failed to sign the notice.

Conclusion

It is my finding that the landlord's \$150.00 rent increase is an illegal rent increase and therefore the rent remains that \$800.00 per month.

It is also my decision that the section 49 Notice to End Tenancy has been given in bad faith and therefore it is hereby cancelled and this tenancy continues.

I further order that the respondent/landlord bear the \$50.00 cost of the filing fee that the tenant paid for her application for dispute resolution, and therefore the tenant may make a one-time \$50.00 deduction from future rent payable 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*.

Dated: November 16, 2010.

Dispute Resolution Officer