



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – DRI, CNC, FF

For the landlord – OPL, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to dispute an additional rent increase, to cancel the One Month Notice to End Tenancy for cause and to recover his filing fee. The landlord seeks an Order of Possession and to recover the filing fee.

The tenant served the landlord in person on November 12, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant in person on November 26, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were 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 have the Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession based on the Notice to End Tenancy?



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Background and Evidence

Both parties agree that this month to month tenancy started in 2004. The tenant pays a monthly rent of \$504.00 on the first day of each month. The tenant paid a security deposit of \$250.00 In June, 2004.

The landlord testifies that a previous hearing was held on September 2010 to deal with the tenants' application to cancel a two month notice issued to him at that time by the landlords. The landlords testify that the tenants unit is in need of extensive repair and updates including the plumbing, new bathroom fixtures, complete rewiring, repairs to the walls and replacement of baseboard heaters. At that hearing the tenant had testified that he worked away from home in the week and would be willing to stay with family for those times he was back in town but could not use the rental unit so the landlord could get this work done. The tenant also testified he would remove his belongings into storage to ensure contractors completing the work would have appropriate access to what they needed.

The landlords have provided a hand written note from one of their contractors stating that the unit is in need of gutting and extensive repairs and a letter from an electrical contractor concerning the electrical repairs required and the level of the tenants belonging in the unit which would prevent this work being carried out. The landlords also testify that they have all the necessary permits in place to do this work

The Dispute Resolution Officer made a decision at that hearing that should the tenant retain possession of the rental unit he is Ordered to comply with the landlords requirements to be away from the unit and to ensure the rental unit is prepared to the requirements directed by the landlord and/or their contractors and in accordance with the landlords project timetable.

The landlord testifies that the tenant has not complied with this Order and has not stayed away from the rental unit or put his belongings in storage to allow the work to the rental unit to be started and completed within their timetables. The landlord has provided photographs of the rental unit which show the tenants belongings in the unit which they state would impede the



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contractors from working. The landlords state the tenant was given Notice to remove his belongings that the work would be carried out on two separate occasions and he failed to comply with either notice.

The landlord states the tenant has been served with a One Month Notice to End Tenancy for cause pursuant to section 47 as directed by the Dispute Resolution Officer at the previous hearing.

The tenant disputes the landlord's testimony. He states that he was working away from home at the time of the previous hearing, however when he returned to work later the job had ended. The tenant states he thought he could just stay out of the way for three days while the bathroom was gutted and renovated and he states he could clear his belongings out of the bathroom to allow the contractors access. The tenant states he was given a notice to remove his belongings as the landlords wanted to carry out some work on a Friday and as he was working 12 hours a day for the next two days he was unable to find storage facilities or time to remove his belongings. He contends that the landlords gave him insufficient notice to remove his belongings.

The tenant states that he agrees that the bathroom needs renovating but states he feels the landlords just want to get him out so they can paint the unit, put in new carpets and then rent the unit for a higher rent.

The tenant testifies that the landlords gave him a Notice of rent increase. This Notice has been provided by the tenant and shows a rent increase has been asked from \$504.00 to \$900.00. This is an increase of \$396.00 starting on January 01, 2010. The tenant seeks to dispute this increase as it is not within the permitted percentage allowed for 2010.

The landlords state this increase Notice was given to the tenant to show this is the amount of increase they will ask for when the rental unit has been renovated.



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Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenant argues that he was not given sufficient time to remove his belongings from the unit as he was working at the time. The tenant does not dispute that he did not comply with the Order made at the previous hearing but states he was willing to stay away from the rental unit for three days while the bathroom was renovated.

In light of the Order made at the previous hearing I find the tenant has not complied with this Order that he must comply with the landlord's requirements to be away from the rental unit and to ensure it is prepared to the requirements of the landlord and /or the landlords contractors. In failing to do this the tenant has prevented the landlords carrying out the necessary work to the unit to ensure it meets with the landlords obligations under section 32 of the *Act*. Consequently, I uphold the One Month Notice and find the landlords are entitled to an Order of Possession. As the effective date of the Notice does not give the tenant one clear month to vacate the rental unit after service of the notice, the effective date of the Notice has been amended to December 31, 2010 in accordance with section 53 of the *Act*.

Consequently, as the tenant will vacate the rental unit before the date the rent increase would start I find I am not required to address the issue of an illegal rent increase at this hearing as it has no effect on the remaining term of the tenancy. I would caution the landlords however that an increase of this amount would not be considered under the *Act* unless the landlords had applied for an additional rent increase. The allowable rent increase for 2010 is 3.2% and for 2011 is 2.3 %

As the tenant has been unsuccessful with his claim I find he must bear the cost of filing his own application.

As the landlord has been successful with their application they are entitled to recover their **\$50.00** filing fee from the tenant and may withhold this from the tenants' security deposit of \$250.00 plus any accrued interest at the end of the tenancy.



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Conclusion

The tenants' application to cancel the One Month Notice to End Tenancy dated November 02, 2010 is dismissed without leave to reapply. The One Month Notice to End Tenancy will remain in force and effect.

The tenants' application to dispute the additional rent increase is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 31, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: December 03, 2010.

Dispute Resolution Officer