



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement for overpayment of rent.

The Tenant and the Landlord's Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

The Tenant testified that he submitted copies of evidence, including the tenancy agreement, but the same was not provided to me at the time of the hearing and I could not verify that it was submitted. I find that I could proceed in the absence of this evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence timely received and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for Unpaid Rent?
2. Is the Tenant entitled to a monetary order?

Background and Evidence

According to undisputed testimony, this tenancy began on June 1, 2004. There was no tenancy agreement before me and I heard disputed testimony that current rent was \$940.00, according to the Tenant, and \$910.00 according to the Landlord's Agent. The Landlord's Agent provided contradictory testimony and evidence, with the evidence showing the security deposit was \$382.50, and the testimony indicating the amount was \$405.00. Additionally I heard testimony that the original rent was \$810.00 per month,

but find that the original rent likely could have been \$775.00, according to the amount of security deposit paid in evidence provided by the Landlord.

Pursuant to the rules of procedure for the Act, the Landlord's Agent proceeded first in the hearing and testified as to why the Tenant had been served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued November 3, 2010.

The Landlord submitted into evidence a Tenant's ledger sheet, dated October 26, 2010, indicating the monthly rent of \$910.00 and which showed a purported rental arrears of \$1,960.00 owed by the Tenant. The sheet was a combination of computer generated figures and handwritten notations regarding rent payments, as well as other unclear notations. The Landlord's handwritten notations on the ledger sheet showed additional cash payment by the Tenant of \$160.00, but the receipt provided by the Landlord showed the cash payment to be \$190.00.

The Landlord submitted a copy of a Notice of Rent Increase, dated September 18, 2009, effective January 1, 2010, increasing rent from \$920.00 to \$940.00. The Landlord also submitted a copy of a Notice of Rent Increase, dated September 17, 2010, effective January 1, 2011, increasing rent from \$910.00 to \$935.00 per month.

The Landlord's Agent testified that the Tenant's rental arrearage began in 2007 and although the Tenant made overpayments, but was not enough to clear the unpaid balance. The Landlord's Agent said he tried to work with the Tenant to clear the matter, but the alleged unpaid balance was not paid. The Landlord's Agent testified that the current amount of unpaid rent is \$2,160.00.

The Tenant testified that when the Landlord's Agent first approached him with the matter of the unpaid rent, he was shocked at the amount and could not believe that three years later they would come up with the amount claimed.

The Tenant testified that he has been overpaying the rent, which he claimed to be \$940.00 pursuant to the prior Notice of Rent Increase, and that he had all his receipts which he stated were submitted into evidence. The Tenant verified that the amount he paid in cash in September 2010 was \$190.00, not \$160.00 which was listed on the ledger sheet. The Tenant was of the position he did not owe any rent and in making this application, the Tenant is seeking compensation for overpayment of rent.

Analysis

Based on the foregoing affirmed testimony and evidence, and on a balance of probabilities, I find as follows:

Where a Tenant receives a 10 Day Notice, the Tenant has five days to pay the Notice or dispute the Notice. Since the Notice was posted on the Tenant's door it is deemed to be served three days later in accordance with section 90 of the Act and I am satisfied the Tenant disputed the Notice issued November 3, 2010 within the time limit imposed by the Act.

As the Landlord's Agent was informed during the hearing it is the Landlord's burden to provide sufficient information to prove the Tenant owed unpaid rent. The Landlord's Agent pointed to the ledger sheet provided by the Landlord's office; however, I did not find that to be conclusive evidence of outstanding rent as the Landlord had made no prior submissions as the origin of the rental arrears and the Tenant would not know which receipts to provide for the hearing or what the actual amount of rental obligation would be. I find the Landlord submitted insufficient evidence to show the Tenant owed unpaid rent in any amount. I find the evidence of the Landlord and testimony by the Landlord's Agent to be contradictory and that neither the Tenant nor I could be certain what is his monthly rental obligation due to the inconsistency in the ledger sheet

Therefore I allow the Tenant's Application for Dispute Resolution, and **I order that the Notice to End Tenancy issued November 3, 2010, is cancelled and is of no force or effect.**

Due to the contradictory nature of the Landlord's evidence and the Landlord's Agent's testimony, I further find that the Notices of Rent Increase dated September 18, 2009, and September 17, 2010, do not comply with the Act, are invalid and are therefore **cancelled** and have no force or effect. Therefore, I **order** that the Tenant's monthly rent is **\$910.00**, effective December 1, 2010, and that the rent will remain at \$910.00 per month and that the Landlord may not impose another rent increase for at least 12 months from the date of this Decision, consistent with section 42 of the Act.

As to the Tenant's Application for monetary compensation, although I find it likely the Tenant may have overpaid rent due to the invalid rent increases and would be entitled to monetary compensation due to, the Tenant has provided insufficient evidence of his payments or other documentary proof, and I find that he has failed to prove an amount of damages or loss. Therefore I **dismiss** the Tenant's Application for monetary compensation and grant both parties leave to apply for dispute resolution for a

determination of any monetary compensation owed by the other party or other terms of the tenancy agreement not addressed in this Decision, upon proper proof provided.

I further note that the Notice to End Tenancy is on an old form, but I make no findings in this matter as I have decided to cancel the Notice for the above stated reasons.

Conclusion

The Notice to End Tenancy issued November 3, 2010 is set aside with the effect that this tenancy continues.

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 06, 2010.

Dispute Resolution Officer