



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, CNR, MNR, MNDC, MNSD, FF, O, OLC, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and for reduced rent for services agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the landlord and her two agents and the tenant and her advocate.

At the start of the hearing the parties acknowledged that 4 - 10 Day Notices to End Tenancy for Unpaid Rent were issued to the tenant by the landlord. Despite the landlord's agent's erroneous assertion that only the last one issued is effective because once a new notice is issued it cancels any previous notices, I accept that both parties have agreed that the 3 – 10 Day Notices issued prior to January 19, 2011 are cancelled.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

In addition it must be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order for the landlord to comply with the *Act* and to a rent reduction for services or facilities agreed upon but not provided, pursuant to Sections 27 and 46 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the landlord and this tenant on January 14, 2009 for a month to month tenancy beginning on February 1, 2009 and that this tenant was responsible for \$800.00 per month due on the 1st of each month and that this tenant paid a security deposit of \$500.00.

The parties confirmed and agreed that the total rent for the tenancy agreement was for \$1,600.00 per month and that this tenant was the primary tenant responsible for the full rental amount.

At the outset of the hearing the landlord's agent acknowledged that the landlord had mistakenly, in March of 2010, removed hydro from the tenancy agreement and required the tenant to put hydro in her name without a commensurate reduction in rent. As such the landlord acknowledges that any rent owed to the landlord should be reduced by the amount the tenant has paid for utilities since that time. The landlord also testified that she has put the hydro back in her own name.

Based on the tenant's submission of her electric billing history and two additional bills for charges up to and including February 3, 2011 provided directly to the landlord from the tenant, the landlord has determined that amount of utilities paid by the tenant is \$1,281.34. The tenant accepts this amount to reflect the amount paid by the tenant.

The landlord submitted into evidence a copy of a tenant ledger showing that the tenant failed to pay rent on December 1, 2010 but that she made payments on December 17, 20, and 31, 2010 leaving a balance at that time of \$360.00. The landlord also notes that on January 1, 2011 the tenant also failed to pay rent which increased the amount due to the landlord to \$1,960.00.

The tenant submitted a receipt signed by the landlord that on January 12, 2011 the tenant paid the landlord \$300.00 towards the amount owed for December 2010 rent. The landlord acknowledged, in the hearing 3 additional payments of \$375.00 on January 19, 2011; \$225.00 on January 26, 2011; and \$900.00 on February 10, 2011.

Analysis

Section 27 of the *Act* states a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit or if providing that service or facility is a material term of the tenancy agreement.

As a result of the landlord's removal of hydro as an included service, the landlord increased the tenant's rent by the amount determined by the total amount paid for hydro by the tenant for the period divided by the number of months that she was paying it or $\$1281.34/10$ months or 128.34 per month. This represents a rental increase of over 8% exceeding the annual allowable rent increase for 2010 of 3.2%.

Section 43 of the *Act* governs the amount of allowable rent increase and provides for circumstances if a landlord collects a rent increase that does not comply with Section 43 that states a tenant may deduct the increase from rent or otherwise recover the increase.

As the 10 Day Notice to End Tenancy states that the tenant owed \$1,660.00 on the date that it was issued and as the tenant applied within 5 days of receiving the notice to

dispute that Notice, based on the amount, clearly outlined in her application, I find that the amount of the notice was incorrect and therefore the 10 Day Notice to End Tenancy is invalid and of no force and effect. I dismiss the portion of the landlord's Application seeking an order of possession.

As the landlord has already corrected the hydro component of the tenancy agreement, I see no need to provide a decision on the matter and I dismiss that portion of the tenant's Application.

Based on the noted payments made by the tenant and including the fact that since the notice was issued the February 2011 rent became due, I find this tenant (primary) owes the landlord \$478.66 and that payment may be made by the primary tenant to the landlord by providing cheques or money orders made payable to the landlord but may be delivered to her agent.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$478.66** comprised of rent owed.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the landlord was only partially successful in her application, I dismiss her request to recover the filing fee for her Application.

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: February 14, 2011.

Residential Tenancy Branch