



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, DRI, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

During the hearing I requested copies of original cheques written by the tenant to the landlord. Copies submitted as evidence by the tenant were illegible. After the hearing late evidence was received that had been submitted by the landlord; this evidence included copies of the tenant's December 30, 2010, rent cheque and January 1, 2011, rent cheque; both in the sum of \$500.00. I have relied upon that evidence, in lieu of the tenant's copies.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 1, 2011, be cancelled?

Has the landlord issued a rent increase in breach of the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant moved into the rental unit in September 2008; in September 2009, the current landlord purchased the property. There is no written tenancy agreement.

The landlord provided a copy of a March 11, 2011, notarized statement signed by the previous owner, in which he stated that rent had been \$650.00 per month. The previous owner stated that the tenant paid \$550.00 per month but that rent owed was never enforced. At the time of the sale the previous owner told the purchaser that rent was \$600.00 per month.

The landlord stated that in September and October 2009, rent was paid by the previous owner, on behalf of the tenant. The tenant has continued to pay \$500.00 per month since September 2009; however the landlord is not sure what was paid in December, 2010, and believes he probably received \$500.00 in January 2011. The landlord testified that in January 2011, he told the tenant rent would increase to \$600.00 per month effective February, 2011.

The cheques submitted as evidence indicated the landlord received \$500.00 rent in December, 2010.

The tenant stated that if the landlord had believed rent was \$600.00 per month he should have dealt with this in 2009. The landlord has accepted rent payments in the sum of \$500.00 for 14 months and then issued a Notice ending tenancy based on rent owed for January and February, 2011, in the sum of \$600.00 per month.

The tenant confirmed receipt of a 10 Day Notice ending tenancy issued on March 1, 2011, for rent owed in the sum of \$675.00 on March 1, 2011. The tenant disputed the Notice within 2 days.

The landlord stated that toward the end of February, the tenant paid \$525.00 owed for that month. The landlord testified that rent is due on the first day of the month; the tenant countered that rent is due on the 20th of each month, as this was the day of the month the tenancy commenced.

Analysis

After considering all of the written and oral evidence submitted at this hearing and on the balance of probabilities, I find that the Notice issued on March 1, 2011, is of no force or effect. This tenancy shall continue until it is ended as provided by the Act.

I have based this decision on the conflicting information provided by the landlord, tenant and previous owner. The previous owner stated rent was \$650.00 per month and then \$600.00 per month; the landlord testified that in January 2011, he told the tenant rent would increase to \$600.00 per month. There is no evidence before me that the landlord issued any previous Notice ending tenancy for unpaid rent; this despite the tenant having

paid approximately \$500.00 per month since September 2009. I find that the evidence before me supports the tenant's submission that he has paid \$500.00 rent per month since September 2009; which I find firmly established monthly rent owed in that sum.

In relation to the due date of rent owed, I find, pursuant to section 62(3) of the Act, based on the consistent submissions from the previous owner and the current landlord, that rent is due on the first day of each month. Therefore, I find that the tenant owes the landlord rent on April 1, 2011, in the sum of \$500.00.

As the tenant submitted the term of the tenancy ran from the 20th to the 20th day of each month, I find that the tenant is not current in the rent owed and that he must forthwith, pay the landlord \$164.40, which then places the tenant in compliance with my finding in relation to the rent due date. If the tenant fails to pay this amount, it may be treated as unpaid rent.

Rent will then continue at \$500.00 per month for each month, due on the first day of each month.

As the tenant's Application has merit I find the tenant is entitled to filing fee costs in the sum of \$50.00 which may be deducted from the rent owed.

The landlord is at liberty to issue a Notice of Rent Increase which complies with the Act.

Conclusion

As I have determined that the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 1, 2011, is of no force or effect I find that this tenancy will continue until it is ended as provided by the Act.

Rent is \$500.00 per month due on the first day of each month.

The tenant must, forthwith, pay the landlord \$164.40; less the \$50.00 filing fee, in order to rectify arrears that resulted from the lack of clarity in relation to the rent due date.

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: March 17, 2011.

Residential Tenancy Branch