



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, DRI, CNR, MNDC, OLC, FF, O

Introduction

This matter dealt with an application by the tenant for more time to cancel a notice to end tenancy, to cancel a Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase, for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the Act, regulations or tenancy agreement and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on March 14, 2011.

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 witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The tenant has applied for more time to cancel a 10 Day Notice to End Tenancy. The Notice was posted on the tenants' door on March 07, 2011 and was deemed served three days after posting. The tenants applied to cancel the Notice on March 14, 2011. Therefore the tenant did apply within the five allowable days and this section of his application is not required and is dismissed.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?
- Is the tenant entitled to dispute a rent increase?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The landlord testifies he served this applicant with a 10 Day Notice to End tenancy in error as he is not a tenant of the unit but rather is an occupant of the unit with the other tenants who have since moved out. No tenancy agreement is in place for the applicant. The landlord testifies that the previous tenant (HA) who lived in the main home asked him if the applicant could move into the bachelor unit as he was working for HA. He states this room has been rented out previously as a separate unit but in this case HA paid rent for this tenant and no security deposit was paid for this unit. The landlord states he has always accepted rent for the whole house including this room from AH. The landlord states the rent was increased in the month of May in 2009 and 2010 by \$50.00 each year.

The tenant disputes this he states he rented the room from the landlord and signed a tenancy agreement for the room which stated his rent would be \$400.00 per month plus \$30.00 for his share of the utilities he was to give to the tenants living in the front house. The tenant states the landlord never gave him a copy of the tenancy agreement and in May, 2009 the landlord put his rent up by \$50.00 per month to \$450.00 and in May 2010 his rent was increased by \$50.00 to \$500.00. The tenant states he did work for the tenant living in the front house and this tenant AH paid his rent to the landlord on his behalf straight from his earnings. He states he was given receipts from AH to show what had been deducted from his earnings for rent each month and has provided these in evidence.

The tenant states he received a 10 Day Notice from the landlord for unpaid rent but this Notice is invalid as it only has his first name on it and he seeks to have the Notice cancelled.

The tenant calls his witness AH who was the tenant residing in the front house. The tenants witness AH testifies that the landlord did ask him to rent this room out when it became vacant and said he could charge extra for it. AH states he told the landlord he was not interested in this arrangement as he did not want to be responsible for the extra rent if it remained vacant. AH states the landlord had a tenancy with the applicant. He states he did employ the applicant and did pay his rent for him out of his wages as he was going to the landlords anyways to pay his own rent. He states the landlord told him he was putting up the rent for the single room and states he just covered this difference himself because the tenant worked for him. The witness states that at no time was this applicant an occupant or a tenant of his and the applicants agreement was solely with the landlord.

The tenant seeks to dispute the rent increases imposed over the last two years and seeks to recover the additional rent paid for this period to the sum of \$1,600.00 as he states he was never notified of a rent increase on an approved form and the amount of the increase is more than the landlord is entitled to charge. The tenant has applied to recover \$3,000.00 in total.

The tenant seeks an Order for the landlord to comply with the *Act* with regards to rent increases.

The landlord testifies that the witness AH agreed to pay the rent increase and therefore he would be entitled to charge it to this tenant. The landlord states the witness AH has since moved from the property and the applicant has remained at the house. He states he wants the applicant to leave the house as he does not have a tenancy in place.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. Before I proceed I have to establish that a tenancy is in place between the applicant and the respondent. I accept the applicants and his witnesses' testimony that his witness paid the applicants rent directly to the landlord from his wages and I find the applicant rented a separate unit from the landlord. It is therefore my decision that a tenancy existed between the landlord and tenant as the landlord accepted rent for this unit and the tenant was not just an occupant of the building but resided in a separate unit.

With regard to the tenants application to cancel the 10 Day Notice to End Tenancy As the landlord has not filled in the tenants' last name on this Notice the Notice is therefore invalid. Consequently, the 10 Day Notice is cancelled and the tenancy may continue. The landlord is at liberty to serve the tenant with another 10 Day Notice in the event rent is outstanding in accordance to s. 46 of the *Act*.

With regard to the tenants application to recover the rent increase imposed since May 2009. As the landlord did not comply with s. 42(2), 42(3) and 43(1) of the *Act* with regard to the rent increases and only notified AH verbally that he was increasing the rent; I find the tenant is entitled to recover the additional rent increase from the landlord to the sum of \$1,600.00 pursuant to s. 43(5) of the *Act*. The tenant did apply for \$3,000.00 but has provided no other evidence to support a monetary Order for this sum. Therefore, he is entitled to a Monetary Order for the amount of rent overpaid only and this has been issued to the tenant for \$1,600.00 pursuant to s. 67 of the *Act*.

I further Order the landlord to comply with the *Act* with regard to any future rent increases imposed upon the tenant.

As the tenant has been successful in setting aside the Notice, he is entitled to recover his **\$50.00** filing fee for this proceeding and may deduct that amount from his next rent payment when it is due and payable to the landlord.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated March 03, 2011 is cancelled and the tenancy will continue.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,650.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to ensure any future rent increase comply with s. 42(3) and 43(1)(a) of the Act.

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: April 07, 2011.

Residential Tenancy Branch