



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes DRI, CNL, MNDC, OLC, RP, RR, FF

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Tenant later amended her application to request an Order that the Landlord make repairs and for a rent reduction.

The oral hearing via teleconference started at 11:00 a.m. as scheduled however by 11:10 a.m. the Tenant/Applicant had not dialled into the conference call and as a result, the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Has there been an illegal rent increase?
3. Is the Tenant entitled to compensation and if so, how much?
4. Is the Tenant entitled to a rent reduction?
5. Are repairs necessary?

Background and Evidence

This month-to-month tenancy started on September 20, 2010. Rent was \$1,800.00 per month payable in advance on the 1st day of each month plus utilities. The Landlord said shortly after the tenancy started the Tenant wanted him to pay for utilities and he agreed to include telephone and water in the rent. The Landlord said the Tenant then complained that rent was still too high so he reduced it to \$1,700.00 per month effective December 1, 2010. The Landlord said the Tenant's co-tenant moved out sometime later and she unilaterally decided to pay only \$1,400.00 per month for January 2011, \$850.00 for February 2011 and \$1,400.00 for March 2011.

The Landlord said his agent served the Tenant on February 28, 2011 with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2011 by posting it to the rental unit door. The ground stated on the Notice was that "the rental

unit will be occupied by the Landlord or the Landlord's spouse or a close family member (father, mother or child) of the Landlord or the Landlord's spouse." The Landlord said the Tenant advised him that she was withholding her rent for April 2011 (or for her last month's rent) to compensate her for the tenancy ending pursuant to the 2 Month Notice.

Analysis

Section 90 of the Act says that a document that is served by posting it is deemed to be received 3 days later. I find that the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2011 was posted on the rental unit door on February 28, 2011 and pursuant to s. 90 of the Act, the Tenant is deemed to have received it on March 3, 2011. Section 49(8) of the Act says that a Tenant who receives a 2 Month Notice must apply to dispute the Notice within 15 days of receiving it or in this case no later than March 18, 2011.

The Tenant filed her application to dispute the 2 Month Notice on March 24, 2011, after the 15 days granted under s. 49(8). Consequently, the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice pursuant to s. 49(9) of the Act and her application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2011 is dismissed without leave to reapply. In the absence of any evidence to support the balance of the relief sought on the Tenant's application, those matters are also dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. 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 18, 2011.

Residential Tenancy Branch