



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulation or tenancy agreement. The hearing commenced May 25, 2011 and at that hearing both parties appeared and were provided the opportunity to be heard and make submissions.

At the May 25, 2011 hearing I determined that I required further evidence from both parties in order to make a decision in this matter and the hearing was set to be reconvened on June 21, 2011. The landlord was specifically instructed to provide evidence with respect to Notices of Rent Increase served upon the tenant. The tenant was specifically requested to identify charges on the ledger he did not agree with. Both parties were instructed to provide their additional evidence to each other and the Residential Tenancy Branch no later than five clear business days before the reconvened hearing.

At the reconvened hearing only the landlord appeared. The tenant did not submit any additional evidence for the reconvened hearing. The landlord did not submit any Notices of Rent Increase but did submit an explanatory letter less than five clear business days before the hearing. I heard that the landlord was unable to serve the tenant with the explanatory letter as he may be in the hospital. Accordingly, I did not accept the explanatory letter, but permitted the landlord to provide verbal testimony in its place.

Issue(s) to be Decided

Is the 10 Day Notice to End Tenancy for Unpaid Rent issued April 6, 2011 valid and enforceable?

Background and Evidence

During the May 25, 2011 hearing, I was provided the following information. The tenancy commenced May 1, 2008 and the tenant paid a \$362.50 security deposit. The tenancy agreement provides that rent of \$725.00 is payable on the 1st day of every month; however, the tenant is currently required to pay rent of \$794.00 per month.

The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on April 6, 2011. The Notice indicates that \$1,463.00 in rent was outstanding as of April 1, 2011.

The landlord provided a copy of a tenant's ledger showing transactions from March 1, 2008 through April 20, 2011. The tenant stated that he paid the manager rent on May 2, 2011 and indicated that he disagreed with several charges on the ledger going back to nearly the beginning of the tenancy.

The landlord stated he was unaware of a rent payment made in May 2011. I requested the phone number of the manager from the landlord which he provided. The manager was reached by telephone and the manager confirmed the tenant paid \$794.00 on May 2, 2011 by way of a Money Order.

I noted on the tenant's ledger that the rent increased from \$725.00 to \$775.00 in March 2009, reverted back to \$725.00 the following month, and then increased to \$775.00 again starting July 2009. Since the increase is in excess of the allowable amount permitted by the Residential Tenancy Regulations I determined it necessary to request copies of Notices of Rent Increase served upon the tenant and I adjourned the hearing.

At the reconvened hearing, the landlord explained that the rent was increased \$50.00 to reflect an agreement to permit the tenant to have a roommate. The landlord acknowledged that such an agreement may not have been made in writing. The landlord also acknowledged that the tenant had asked permission for a roommate a second time, starting in July 2009, but the tenant did not actually get a roommate and the rent did not return to \$725.00. The landlord was of the belief the tenant would have received a Notice of Rent Increase to increase the rent from \$775.00 to \$794.00 starting July 2010.

The landlord was very agreeable to adjusting the tenant's ledger to reflect the correct charges for rent and calculate the correct amount of rent owing.

Analysis

Upon review of the tenancy agreement, I noted that the tenant was not permitted to have additional occupants in the rental unit. Accordingly, the tenancy agreement does not provide that rent varies with the number of occupants in the rental unit. I was not provided any documentary evidence that the tenancy agreement was changed to permit the landlord to charge additional rent for additional occupants and in the absence of the tenant I could not confirm this. Nor was I provided documentary evidence the tenant agreed to the \$50.00 rent increase in writing and then served with a Notice of Rent Increase. Accordingly, I find insufficient evidence the monthly rent was legally changed to \$775.00.

Further, the increase to \$794.00 was based upon \$775.00 per month. Accordingly, I find the increase to \$794.00 to be invalid. Therefore, I order that the monthly rent is \$725.00 and shall remain at \$725.00 per month until it is increased in a manner that complies with the Act.

Since the amount appearing on the 10 Day Notice issued on April 6, 2011 was determined using rent increases that I have found to be invalid, I find the 10 Day Notice to be invalid and unenforceable. Accordingly, I do not grant the landlord's request for an Order of Possession or Monetary Order for unpaid rent and the tenancy shall continue. Nor, do I award the filing fee to the landlord.

In light of the above findings, I ORDER that the landlord adjust the tenant's ledger to reflect monthly rent charges of \$725.00 starting at the beginning of the tenancy and continuing until the adjustment is made. The landlord must also remove the "arbitration" charge entered in the ledger on April 20, 2011 and ensure the payment made May 2, 2011 is recorded.

After the landlord has adjusted the ledger, the landlord is ORDERED to provide the tenant with a copy of the adjusted ledger. Should rent remain outstanding after the above adjustments have been made, the landlord is at liberty to issue another 10 Day Notice and the tenant may pay or file to dispute the Notice within five days of receiving the Notice.

The landlord also retains the right to issue a Notice of Rent Increase at any time from this date forward to increase the rent from \$725.00 provided the amount of the rent increase complies with the Act and the tenant is provided three full months of notice.

Conclusion

The 10 Day Notice issued April 6, 2011 was found to be invalid and unenforceable. The landlord's requests for an Order of Possession and Monetary Order were denied.

The tenant's monthly rent is set at \$725.00 and the landlord is ordered to adjust the tenant's ledger to reflect the monthly rent of \$725.00, remove the arbitration charge entered on April 20, 2011, and record the tenant's rent payment of May 2, 2011. The landlord is also ordered to provide the tenant with a copy of the adjusted ledger.

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: June 21, 2011.

Residential Tenancy Branch