



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for the landlords' use of the property. The tenant states he checked the wrong box on his application and checked the box to cancel a Notice to End Tenancy for Cause. The landlord did not voice any objections to the Dispute Resolution Officer amending the tenants' application to dispute the correct notice. The tenant has also applied to dispute an additional rent increase 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 sent by registered mail to the landlord on May 17, 2011. The landlord confirmed receipt of the hearing documents. Both Parties confirmed receipt of evidence sent by the other Party.

Both parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started in the fall of 1998. Rent at that time was \$500.00 by verbal agreement and was due on the first of each month in advance. The landlord testifies that he served the tenant with a Two Month Notice to End Tenancy by registered mail on April 19, 2011. This notice has an effective date of June 30, 2011 and gave a reason to end the tenancy as the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testifies that he served this notice to the tenant in good faith as he wants to renovate the unit which will include new flooring, painting, new kitchen and the removal of a dividing wall between the kitchen and living room. The landlord also states he may do some work to the bathroom. The landlord testifies that he contacted the City about the renovations and was told he did not require a permit or approval as long as he was not doing any major structural, plumbing or electrical work.

The landlord states that he believes the amount of work he wants to do will warrant vacant possession of the rental unit as his contractor (who is the landlords' son) has told him it will be difficult to do this work with a tenant living in the unit. The landlord intends to start this week around July 06, 2011 and estimates it will take a maximum of two weeks to complete.

The tenant testifies that as the work will only take two weeks and is not major construction that warrants either building permits or approvals that he does not feel it is necessary for him to vacate the rental unit and would be willing to move his belongings out of the contractors way, move into the basement of the unit or relocate for any period necessary. The tenant states he and his girlfriend are supportive of the landlords' intention to improve the property. The tenant states they are out during the day so the landlord and his contractor will have full access to the house for this work.

The tenant seeks to have the Notice to End Tenancy cancelled and as he has not paid his rent for June as per section 51(1) of the *Act* if his tenancy continues he will ensure the landlord receives his rent as soon as possible.

The tenant testifies that after being served this Notice to End Tenancy he became aware of the *Residential Tenancy Act (Act)* and his rights as a tenant. The tenant states the landlord has imposed illegal rent increases since November, 2006. The tenant states at that time this rent was \$500.00 per month and the landlord gave him an eviction notice with an ultimatum to either pay a rent increase or vacate the unit. The tenant states he had no choice but to pay the rent increase of \$150.00 per month. The tenant states each year after this the landlord imposed rent increases without using an approved form, without giving the tenant three months notice and imposed increases which were above the amount allowed under the *Act*. The tenant states his rent increased from \$650.00 to \$676.00 on December 01, 2007; On December 01, 2008 his rent increased to \$703.00; on January 01, 2010 his rent increased to \$732.00 and on February 01, 2011 his rent increased to \$761.28. The tenant testifies over the last five years he has paid \$7,829.83 more than he should have if the landlord had complied with the *Act*. The tenant seeks to recover this sum and states if the landlord had acted in accordance with section 43 of the *Act* his rent would be \$592.07 per month at this time. The tenant states he is in full agreement with his rent being \$592.07 per month and would support the annually rent increases in accordance to the *Act*.

The landlord testifies that he did not increase the tenants rent until 2006. He states the tenants' girlfriend has moved in to the rental unit when it was only rented to a single person and the tenants' neighbours pay a higher rent of \$625.00. The landlord states that the rent charged for this property is fair compared to other properties in the area. The landlord does agree however that he was wrong to not give the tenant a Rent Increase Notice and states at the time of the first rent increase he was considering renting the unit to his daughter and so gave the tenant the option to move out or pay the higher rent. He states the tenant agreed to pay the rent to avoid moving out.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the Two Month Notice to End Tenancy; If the work to be completed by the landlord does not require substantial renovations and the landlord has stated this work should only take two weeks to complete I can see no reason why the tenant should have to move from the rental unit if he is willing and able to work with the landlord and his contractor in removing his furniture and belongings from rooms which require work. I also find the tenant has agreed to live in the basement portion of the rental unit or relocate during the period that work is carried out. Consequently, after considering the landlords arguments I find the landlord has not shown that vacant possession of the rental unit is required to complete these renovations. Consequently, the tenants' application to have the Two Month Notice to End Tenancy cancelled is upheld.

I would caution the tenant however to ensure he does remove his belongings from the work areas to ensure no damage is caused to them during this construction work.

With regard to the tenants claim to dispute an additional rent increase; I have considered the tenants arguments in this matter and looked at his calculations. In this matter I refer the landlord to s. 42(2), 42(3) and 43(1), 43(5) of the *Act*:

Timing and notice of rent increases

42 (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3),
or

(c) agreed to by the tenant in writing.

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Consequently as the landlord agrees he did not comply with these sections of the *Act* and did not give notice of a rent increase, did not use an approved form, did not calculate the increase in accordance with regulations and the tenant did not agree in writing to the rent increases then the tenant is entitled to recover the rent increases pursuant to s. 43(5) of the *Act*.

However, I refer the tenant to s. 7(2) of the *Act* which states:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

With this in mind it is my decision that the tenant did not mitigate his loss in this matter by seeking advice when the first rent increase in 2006 was imposed or after each subsequent rent increase was imposed. Both parties have a responsibility under the *Act* to know their rights and obligations during a tenancy. Therefore I have limited the tenants compensation effective from January 2010 to May 2011. I further find the tenant does not dispute that the landlord is entitled to the permitted rent increases under the *Act* and regulations. Therefore by the tenants calculations from January, 2010 to January, 2011 the landlord would have been entitled to rent of \$578.76 per month and the tenant overpaid by \$153.24 for 13 months to the sum of \$1,992.12. Again by the tenants' calculations for the period from February, 2011 to May, 2011 the landlord would have been entitled to rent of \$592.07 per month and the tenant overpaid by \$169.21 for four months to the sum of \$676.84. The total amount of compensation the tenant is therefore entitled to recover is \$2,668.96.

Rent from June, 2011 is therefore set at \$592.07 until such a time as the landlord increases the rent in accordance to s. 42 and 43 of the *Act*.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy dated April 18, 2011 is cancelled and the tenancy will continue. 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.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,668.96** pursuant to s. 43(5) of the Act. The Order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 08, 2011.

Residential Tenancy Branch