



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNR FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for unpaid rent, as well as to dispute an additional rent increase. One tenant and the landlord participated in the teleconference hearing.

The tenants submitted evidence which the female tenant testified was dropped off by her husband at the landlord's house on July 19, 2011. The landlord stated he did not receive that evidence. I did not admit or consider that evidence.

The landlord submitted late evidence which he testified was sent by registered mail to the tenants. The tenant stated that she did not receive that evidence. I did not admit or consider that evidence.

Issue(s) to be Decided

Did the landlord increase the rent beyond the permissible amount?
Is the notice to end tenancy valid?

Background and Evidence

The tenants began residing in the rental unit in 2009. The landlord at the time was a property management company. The monthly rent was \$4300. In 2010, the owner presented the tenants with a new lease to be effective January 31, 2011, in which the owner was named as the landlord, and the monthly rent was to be \$5000. The tenants signed the new agreement, and as of February 1, 2011, the tenants began paying \$5000 rent.

On July 2, 2011, the landlord served the tenants with a notice to end tenancy for unpaid rent, which stated that the tenants did not pay \$2400 that was due on July 1, 2011.

The evidence of the tenants was as follows. The tenants “had no choice” but to sign the new tenancy agreement, because they did not want to have to move during the school year. The tenants then became aware that the landlord had raised the rent beyond 2.3 percent, which is the maximum permissible amount under the Act. On June 1, 2011, the tenants paid \$2000, and withheld \$400 because of the overpayment of rent in February and March 2011. The tenants then paid \$2400 on June 18, 2011. On June 30, 2011, the tenants paid \$2400 for the first half of July 2011.

The evidence of the landlord was as follows. The tenants began to fall behind in their rent payments, so the landlord verbally agreed to reduce the rent temporarily to \$4800 per month, for the months of June and July 2011, and he also agreed to let the tenants pay the rent in two instalments, on the first and the 15th of the month. The landlord first stated that he had not received any payment for the first half of July, and then he later acknowledged that he had received payments of \$2000 on June 1, 2011, \$2400 on June 18, 2011 and \$2400 on June 30, 2011.

Analysis

In considering the evidence, I find as follows.

I find that the July 2, 2011 notice to end tenancy for unpaid rent is not valid. The notice indicated that \$2400 was due on July 1, 2011. According to the landlord’s own testimony, the greatest amount of rent that was outstanding would have been \$400, the amount withheld by the tenants on June 1, 2011. The landlord’s evidence was contradictory on this point, and I do not find that it is appropriate to amend the notice in this case. The notice is cancelled.

In regard to the issue of a rent increase, I find that there was no rent increase because the tenants entered into a new tenancy agreement. The tenants did not provide sufficient evidence to indicate that they signed the agreement under duress. The rent set out in the agreement is \$5000 per month.

As the tenants’ application was partially successful, I find they are entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

The notice to end tenancy dated July 2, 2011 is cancelled.

The portion of the tenants' application disputing an additional rent increase is dismissed.

The tenants may withhold \$25 from their next month's rent.

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: July 28, 2011.

Residential Tenancy Branch