



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent (the "Notice"), , and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with the Notice of Hearing documents by registered mail and that the parties exchanged evidence within the timelines required.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Notice issued June 10, 2011, be cancelled?

Background and Evidence

There is no written tenancy agreement between the parties. However, the parties agreed on the following facts:

- The tenancy started on December 1, 2009.
- Monthly rent at the beginning of the tenancy was \$775.00, due on the first day of each month.
- The Tenant paid a security deposit in the amount of \$387.50 on November 13, 2009.

On June 10, 2011, the Landlord posted the Notice on the Tenant's door. The Notice alleges unpaid rent in the amount of \$385.00 that was due on June 1, 2011.

The Landlord testified that on July 1, 2011, the Tenant paid full rent of the month of July, 2011, plus \$55.00 towards unpaid rent from June, 2011, less \$50.00 pursuant to an Order of the Director, for a total amount of \$780.00. The Landlord did not provide evidence that he had accepted rent "for use and occupancy only".

The Landlord stated that the Tenant still owes \$330.00 in unpaid rent due to a rent increase that became effective January 1, 2011. The Landlord testified that the Tenant agreed to pay the increase and that she did so for January, February, March, April and May, 2011.

The Tenant testified that the Landlord did not issue a Notice of Rent Increase and that she was not aware that the increase was more than was allowed under the provisions of the Act. She stated that she was also unaware that the Notice had to be in the prescribed form. Therefore, she deducted the amount of rent that she had overpaid from June's rent. She realized later that she had deducted \$55.00 too much, so she paid that amount along with her July rent.

The Landlord stated that \$35.00 of the \$55.00 rent increase was to compensate him for the Tenant's use of internet which was not included in the rent at the beginning of the tenancy.

Analysis

I find that the Notice is of no force and effect and it is cancelled. I find that the Landlord, in accepting rent for the month of July, 2011, reinstated the tenancy with the Tenant. Furthermore, the rent increase imposed in January (from \$775.00 to \$830.00) is not a legal rent increase because it was not provided at least three months in advance; it was not on the prescribed form; and it is in excess of the amount allowed by the Act.

I find that rent is \$775.00 per month and that the Tenant does not owe the Landlord any money towards unpaid rent. I further find that the use of internet is included in the monthly rent. There was no documentary evidence that internet was not included in rent at the beginning of the tenancy (i.e. a written tenancy agreement), the Tenant did not pay for internet from the beginning of the tenancy and the Landlord cannot unilaterally demand that she pay for internet more than one year after the tenancy began.

The Tenant has been successful in cancelling the Notice and I find that she is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of

Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord and the Landlord must accept this as rent paid in full.

Conclusion

The Notice to End Tenancy issued June 10, 2011 is **cancelled**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I find that **rent is \$775.00 per month** and that it **includes internet**.

The Tenant may deduct **\$50.00** from future rent due to the Landlord.

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 05, 2011.

Residential Tenancy Branch