



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, CNR, RR, OLC, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. Cancel a Notice to End Tenancy for unpaid rent;
2. Monetary order owed or compensation for damages;
3. Seek landlord to comply with the Act;
4. Make emergency repairs for health or safety reasons;
5. Allow tenant to reduce rent for repairs; and
6. Recover filing fee from the landlord.

The landlord's application is seeking orders as follows:

1. An order for possession;
2. A monetary order for unpaid rent; and
3. Recover filing fee from the landlord.

Both parties appeared in the conference call hearing, gave affirmed testimony, and were provided the opportunity to present their evidence orally, and in written and documentary form and make submission to me.

Preliminary matters

The landlord testified at the start of the proceedings that he is not proceeding with his application as the tenants have moved out of the rental unit and they have paid the balance of the rent due.

The tenant testified that they are no longer in the rental unit and the order that they are seeking is the monetary order for an illegal rent increase and to recover the cost of filing the application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for an illegal rent increase?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant testified that the tenancy began in November 2006, that they rented a cabin that is on the motel property and that there are multiple cabins on the property that are rented as part of a motel.

The tenant testified that he has paid monthly rent in the amount of \$787.50 since the start of their tenancy in 2006, and that they have continuously lived in the cabin over the 5 year tenancy, until recently when they moved into another cabin while renovations were being completed on the one they had been residing in.

The tenant testified that in April 2010, the property was sold, and they continued to pay rent in the amount of \$787.50 per month to the new landlord. On July 1, 2010, the rent was increased to \$840.00; he was told by the landlord that the increase was to accommodate the new harmonized sales tax in the amount of \$52.50.

The tenant testified that he never had to pay the goods and services tax on his rental unit prior to July 2010, and believes that landlord is not allowed to collection the harmonized sales tax for residential housing and wants to be compensated for the illegal rent increase charged in the amount of \$840.00, comprised of \$52.50 per month from July 1, 2010, to October 1, 2011.

The landlord's agent testified that it is not an illegal rent increase, but they are required to collection the harmonized sales tax on the rent, as the amount of rent works out to be in excess of \$20.00 per day. Only amounts under \$20.00 per day are exempt under the harmonized sales tax. Therefore, the tenants are not entitled to any compensation.

In the documentary evidence filed by the tenants, is a copy of the 10 Day Notice to End Tenancy for Unpaid rent, signed by the landlord on October 21, 2011.

Analysis

In considering all the evidence and testimony, I find as follows:

Both parties have made an application under the Residential Tenancy Act to seek either compensation or enforcement. I find that Residential Tenancy Act applies to this tenancy agreement.

Section 2(1) of the Act states: "Despite any other enactment but subject to Section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

Section 4(e) of the Act states: "This Act does not apply to living accommodation occupied as vacation or travel accommodation".

I find the cabin the tenants were renting was not for the purposes as set out in section 4(e) of the Act, this was not a vacation rental. This cabin was rented as the tenant's primary residence and they have occupied the cabin for approximately 5 years.

I further find that although the motel does have short-term rental periods, a continuous occupancy such as this is considered to be a residential tenancy. Therefore, is exempt from the harmonized sales tax.

Furthermore, under Section 41 of the Act a landlord must not increase the rent unless done in accordance with the Act.

I find the landlord did not comply with section 42 of the Act by providing the required notice or by increasing the rent in accordance with the yearly allowable rent increase.

Therefore, I find that tenants are entitled to be compensated in the amount of \$840.00 for an overcharge of rent.

I further find that since the tenants have been successful in their application that they are entitled to recover the cost of filing their application in the amount of \$50.00.

Conclusion

I find that the tenants are entitled to a monetary order in the amount of \$890.00 comprised of the collection of the harmonized sales tax and filing fee.

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: November 07, 2011.

Residential Tenancy Branch