



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, MNR, DRI

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications. The tenant applied for more time to cancel a Notice to End Tenancy, to cancel the 10 Day Notice to End Tenancy for unpaid rent and to dispute an additional rent increase. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing; however the landlord did not provide documentary evidence to the tenant in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant has applied for more time to file an application to cancel the Notice to End Tenancy. This notice was served upon the tenant in person on January 02, 2012 and the tenant filed her application to cancel the Notice on January 06, 2012. Therefore as the tenant has filed her application within five days of receiving the 10 Day Notice to End Tenancy the tenant does not require an extension of time and this section of the tenants application is therefore dismissed.

Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Has an additional rent increase been imposed and if so is the tenant entitled to dispute it?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The tenant testifies that she moved into the unit in June 2009 when it was owned by the previous landlord. The tenant testifies that her rent was \$300.00 per month as agreed by the previous landlord. The tenant states when this landlord became the owner of the property in January 2011 the landlord wanted the tenant to sign a new tenancy agreement. The tenant testifies that she refused to sign that agreement as she was still governed by her agreement with the previous landlord concerning the amount of rent she paid. The tenant testifies that the new landlord wanted to put her rent up and started discussing this with the tenant in December, 2011. The landlord told the tenant verbally that her rent would increase to \$350.00 from January 01, 2011. The tenant states the landlord did not use a rent increase form.

The tenant testifies that she paid her rent in cash each month and did not receive any rent receipts from the landlord. The tenant testifies that if the landlord has now produced rent receipts the tenant disputes the authenticity of these receipts and states the landlord has simply reproduced these receipts for the hearing.

The landlord agrees that they became the owner of the property in January, 2011. The landlord testifies that the tenants rent was \$400.00 with the previous landlord but the landlord agreed to reduce the rent to \$350.00. The landlord testifies that the tenant paid \$350.00 from January, 2011 to August 2011 and then only paid \$300.00 from September, 2011 to January, 2012. The landlord testifies that the tenant owes rent of \$250.00. The

landlord served the tenant with a 10 Day Notice to End Tenancy on January 02, 2012 in person. This Notice states the tenant has five days to pay the outstanding rent, dispute the Notice or the tenancy will end on January 02, 2012.

The landlord testifies that they did not serve the tenant with their evidence package consisting of a copy of the 10 Day Notice, a copy of the unsigned tenancy agreement or copies of the rent receipts because the tenant already had these documents.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord documentary evidence; the landlord failed to serve the evidence to the other party. If I was to accept the evidence I find it would prejudice the other party. Even if the landlord believes that the tenant has previously been given these documents the landlord must still serve any evidence they wish to rely on to the tenant prior to the hearing so the tenant is aware of the landlord's evidence and can dispute the evidence if they choose to. As this evidence was not served to the tenant before the hearing pursuant to s. 3.1(d) of the Residential Tenancy Branch Rules of Procedure the landlords evidence has been excluded.

The tenant contradicts the landlords testimony that rent was \$350.00 and disputes that the tenant had paid this amount from January to August, 2011. The burden of proof in this matter falls to the landlord to provide corroborating evidence to support the landlord's claim that the tenants rent was \$350.00. As the landlords evidence has been excluded from this hearing I find the landlord has provided no corroborating evidence to support their claim that the tenants rent was \$350.00 and the tenant only paid \$300.00 from September, 2011 to January, 2012 therefore owing \$250.00 in unpaid rent.

Consequently, as I have no proof to show that there is any outstanding rent, the tenant's application is upheld and the 10 Day Notice to End Tenancy is cancelled.

With regard to the tenants application to dispute an additional rent increase. The tenant testifies that the landlord verbally informed the tenant that her rent would increase to

\$350.00 from January 01, 2012. I find the tenant's application to dispute the rent increase of \$50.00 is upheld on the grounds that it is an illegal increase because the landlord did not give the tenant three months written notice on an approved form. I also find the amount of the increase is above the allowable amount for 2012. A landlord is only entitled to increase a tenant's rent by 4.3 percent for 2012. As I have determined that the tenants rent is \$300.00 the landlord is only entitled to increase the tenants rent by \$12.90 pursuant to s.42 and 43 of the *Act*.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated January 02, 2012 is cancelled and the tenancy will continue.

The tenant's application to dispute the rent increase is upheld. I find the tenants rent is \$300.00 per month until such a time as a three month Notice to increase rent on an approved form is provided to the tenant in accordance with s. 42 And 43 of the *Act*.

The landlord's application is dismissed in its entirety without leave to reapply.

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: January 25, 2012.

Residential Tenancy Branch