



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF, MT, CNR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 28, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. More time to make an application to cancel the Notice to End Tenancy – Section 66.

The Landlord applied on March 5, 2012 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant clarified that the application includes an order to cancel the Notice to End Tenancy, although not ticked off on the application. Accepting this intention, I find that the Tenant has applied to cancel the Notice to End Tenancy despite the lack of a check mark on the application. Further, the Tenant states that he was required to pay the filing fee sometime after the application was made and requests recovery of the filing fee. Given the receipt for the payment of the filing fee, consideration will be provided for recovery of the filing fee.

As the application was made within the time frame required, I find that the Tenant does not require additional time and this part of the application is dismissed.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began January 15, 2000. The tenancy agreement was signed on January 14, 2000 and a copy was provided by the Tenant as evidence. The tenancy agreement provides that rent of \$325.00 is payable monthly on the first day of each month. The Parties agree that the Tenant's rent is currently \$337.50. The Parties agree that the tenancy agreement was for shared accommodation and a third party entered into a separate tenancy agreement for the same unit to commence on June 15, 2000. This tenancy agreement was provided as evidence by the Landlord and notes that this third party's rent was \$325.00 at the time. The Landlord states that this rental amount was also increased to \$337.50 when the Tenant's rent was increased to this amount. The Landlord states that the third party moved out of the unit sometime in the first part of December 2011 and moved into another unit in the building, paying rent for the new unit for December 2011 and not the unit in dispute. The Landlord states that the Tenant was told that as the third party moved out of the unit, the Tenant would be responsible for the rent payable by the third party and the Landlord received two amounts of \$337.50 for the rent from the Tenant for either December 2012 or January 2012. The Landlord states that the Tenant was forgiven half of the rent for one of those months and that no claim is being made for rent prior to February 2012. The Tenant states that the Landlord threatened the Tenant with eviction if the Tenant did not pay the extra rent however the Tenant states that the extra amount should be applied now to March 2012 rent.

There is no dispute that the Landlord received \$337.50 from the Tenant for February 2012 rent. On February 21, 2012, the Landlord personally served the Tenant with a Notice to End Tenancy for Unpaid rent setting out rent unpaid in the amount of \$335.00 plus a late fee of \$20.00. The Landlord states that although the Tenant has a tenancy agreement based on shared accommodation and that since the start of the tenancy has shared the unit with another person who paid separate rent on a separate tenancy agreement, that the Landlord has discontinued the policy of renting shared accommodation with separate tenancy agreements and that the Tenant is now required to pay the full amount of rent for the unit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As noted above, the tenant filed the application within the time frame required and disputed the Notice. Given the tenancy agreement with the Tenant and the undisputed evidence of the Parties that the Tenant paid the rent according to the tenancy agreement and a subsequent increase based on the original rent for a period of several years, I find that the Landlord does not have a right to a greater amount from the Tenant simply because the other tenant with its own tenancy agreement for the unit moved out. As a result, I find that the Notice to End Tenancy for unpaid rent is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues and the Landlord's application is dismissed.

Based on the undisputed evidence of the Parties, I further find that the Landlord was overpaid for rent by the Tenant in the amount of \$337.50 and that the Tenant's rent for March 2012 has therefore been paid in full. As the Tenant has been successful with its application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to deduct this amount from rent payable for April or May 2012.

Conclusion

The Notice is cancelled and the tenancy continues. The Tenant's rent for March 2012 has been paid.

I Order the Tenant to reduce rent for April or May 2012 by \$50.00.

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: March 22, 2012.

Residential Tenancy Branch