



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the landlord stated that the tenant paid rent without the rent increase on February 1st, 2012. He first said that he served the tenant with a 10 Day Notice to End Tenancy by registered mail on February 5th, 2012; then corrected the date to February 4th. He said that the tenant paid the increase on February 15th and that he does not take issue on whether or not rent was paid one day late. Therefore I consider that rent was paid and the Notice to End Tenancy is set aside. What remains at issue in these proceedings is the effective date of the notice of rent increase.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on December 1, 2003.

The landlord testified that according to a Residential Tenancy Branch decision dated August 24, 2011, he was granted a rent increase of \$375.00 effective February 1, 2012. He stated that to in order to be compliant and thorough with his obligations, he nevertheless sent the tenant a Notice of Rent Increase by registered mail, sent on October 25, 2011, provided a tracking number showing that the tenant did not pick up the notice until November 10, 2011 despite a record that on October 26, 2011, a notice card was left indicating that the notice could be picked up at the post office. The landlord states that pursuant to the Act, a notice served in that method is deemed served 5 days later; in this case October 30th, 2011, which would make the increase effective February 1st, 2012 as stated in the Residential Tenancy Branch decision of August 24, 2011.

The tenant testified that she did not receive any notice on October 26, 2011 from Canada Post as suggested by the tracking report. She states that the landlord emailed her about the notice being sent registered mail on November 9, 2011 and that she verified with the mail carrier because she did had not yet received the notice. She referred to an occasion where a neighbour's notice of registered mail was posted on her door, and surmised that this is an all likelihood what happened here.

The tenant cited a Supreme Court ruling concerning proper service in which the judge found that the legislation concerning service of documents did not intend to eliminate the aspect of natural justice, and that it creates a rebuttable presumption of notice, not a conclusive one. The tenant also cited a relevant Residential Tenancy Branch judicial review in which the judge found that failing to consider that rebuttable evidence is an error at law. The tenant submitted that since she received the notice of rent increase on November 10, 2011, the effective date should be March 1, 2012. She also argues the landlord's interpretation of the August 24, 2011 decision, wherein it states that the rent increase cannot take effect until February 1, 2012, and not on that date.

Analysis

In her August 24, 2011 decision, the Dispute Resolution Officer did not exempt the landlord from issuing the tenant with a notice of rent increase, and I find that the landlord's notice was appropriate in the circumstances. The tenant's rebuttal concerning her receipt of the notice of rent increase no earlier than on November 10, 2011 is credible. I am influenced in part by the physical location; an apartment complex, the tenant's evidence concerning a registered mail notice posted on the wrong door, and as such the likelihood for human error. The tenant was alerted by the landlord that registered mail was sent; the tenant verified with the mail carrier that mail was delivered on November 10, 2011.

Lastly, and most importantly, in her documentary evidence the tenant also cited a previous Residential Tenancy Branch decision dated December 7, 2011, wherein the Dispute Resolution Officer determined already that the tenant did not receive the notice until November 10, 2011. Although referring to a different notice, the notice of rent increase, although not addressed at the hearing, was included in that package and as such, that decision is relevant in these proceedings when determining the date of receipt. Therefore I consider that the aspect of the tenant's application concerning receipt of the notice of rent increase has already been decided; on the basis of "res judicata" I decline to hear previously heard evidence and no subsequent or different determination will be made.

Based on these submissions, the tenant received the notice of rent increase on November 10, 2011, and the effective date of the increase is March 1st, 2012.

Conclusion

The tenant is authorized to recover the \$375.00 rent increase paid in February in the next payable month's rent. Since the tenant was successful, I authorize the landlord to recover the \$50.00 filing for a one time rent reduction of \$425.00, after which rent will be restored to \$1500.00 per month.

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 05, 2012.

Residential Tenancy Branch