



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This hearing dealt with the tenant's amended application to dispute a rent increase and to cancel a Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural and preliminary matters

Two tenants were identified on the Application for Dispute Resolution and I determined that the two tenants were parties to two separate tenancy agreements involving two different rental units. A decision or Order may apply to multiple tenancy agreements in limited circumstances and in accordance with the Rules of Procedure. In this case, I found the inclusion of two different tenants, under separate tenancy agreements for two different rental units, on a single application to be flawed. Considering the second co-applicant did not appear and the parties in attendance at the hearing indicated they wished to amend the application by excluding the second named co-applicant I made such an amendment. I proceeded to hear from the parties in attendance at the hearing.

On another note, the named respondent landlord is the owner of the property and the landlord named on the tenancy agreement and Notice to End Tenancy. Until recently the rental property has been managed by the owner. Shortly before the application was made the owner employed the services of a professional property manager. Both the owner and the property manager were in attendance at the hearing. By definition, both the owner and the property manager meet the definition of a landlord under the Act. Where relevant, I have differentiated between the owner and property manager in this decision.

Finally, the property manager pointed out that some of the tenant's documents appear different than the documents provided by the landlord, especially in the signature areas. The tenant explained that the blue ink did not copy well. I informed the parties that I

would refer to the landlord's copies of the documents to avoid any concerns the landlord may have about the integrity of the documents.

Issue(s) to be Decided

1. Has the landlord illegally increased the monthly rent payable?
2. Should the Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The parties executed a written tenancy agreement on May 31, 2009 for a tenancy set to commence June 1, 2009. The tenancy agreement requires the tenant to pay rent of \$1,800.00 on the 1st day of every month. The tenancy agreement provides that at the end of one year the tenancy agreement would terminate and the tenant would have to vacate the rental unit.

On May 24, 2010 the parties executed a one page document entitled "Rental Agreement". It states,

"We agree to extend the lease for [address of rental unit] from June 1, 2010 to May 31, 2010. Rental amount is \$1,900.00, all other terms and conditions remain the same as the original rental agreement."

On May 22, 2011 the parties executed another document entitled "Rental Agreement". It states:

"We agree to extend the lease for [address of rental unit] from June 1, 2011 to May 31, 2012. Rental amount is \$2,000.00, all other terms and conditions remain the same as the original rental agreement."

It was undisputed that the tenant provided the owner with 12 post-dated rent cheques each time the lease was renewed.

In March 2012 the tenant began communicating with the owner about recovery of rent increases paid for the period of June 2010 through March 2012 which he submitted do not comply with the requirements of the Act and Residential Tenancy Regulations. Subsequent to the tenant's request, the owner employed the services of a property manager.

It was undisputed that the property manager sent the tenant a letter instructing the tenant to start providing rent cheques to the property manager. The property manager did not provide a copy of the letter as evidence for this hearing.

It was undisputed the tenant did not provide cheques to the property manager and on April 5, 2012 the property manager issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant failed to pay rent of \$2,000.00 to the owner on April 1, 2012. The Notice was sent via registered mail which the tenant acknowledged receiving on April 10, 2012.

The property manager was of the position the tenant failed to provide rent cheques to him as instructed in writing. The tenant was of the position he had provided the owner with rent cheques for the entire year when the last lease was renewed and the owner did not return his cheques to him. Alternatively, the owner could have endorsed the rent cheques to the property manager.

During the hearing, the owner stated she “was not in possession” of the rent cheques any longer. When questioned further she indicated she had returned the tenant’s post dated cheques to him. The owner was asked to provide specific testimony as to when, where and how she returned the cheques to the tenant. The landlord did not answer all three components of this question and changed her testimony from statements that she put the cheques in the tenant’s house to testimony that she put the cheques on his door.

With respect to the issue of rent increases, the tenant was of the position that the landlord was limited to yearly rent increases as provided by the Act and Regulations.

The property manager and owner were of the position that new agreements were entered into every year and that a new rental amount may be set with each new agreement.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement entered into in 2009; the renewal agreements signed in May 2010 and May 2011; the 10 Day Notice; the tenant’s calculations with respect to allowable rent increases; emails exchanged between the tenant and owner; and, written submissions of both parties.

Analysis

Upon consideration of the evidence before me I provide the following findings and reasons with respect to the two issues raised in this application.

10 Day Notice to End Tenancy for Unpaid Rent

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the Notice is valid and that the tenancy should end for the reason indicated on the Notice.

It is undisputed that the tenant provided 12 post dated cheques to the owner when the last renewal agreement was entered into. However, the parties were in dispute as to whether the post dated cheques for April and May 2012 were returned to the tenant by the owner.

The tenant testified the owner did not return his rent cheques to him and the landlord submitted that she had returned the cheques to the tenant. Having heard from both the owner and the tenant, I prefer the tenant's testimony over that of the owner. I found the tenant consistent in this position that the post-dated cheques were not returned to him. In contrast, I found the owner's testimony to be inconsistent and vague. Therefore, I accept that the owner did not return the tenant's cheques to him.

It was undisputed that the property manager advised the tenant to send him rent cheques; however, I was not provided a copy of that letter and I am unable to determine the content of that letter. Rather, I was provided a copy of the 10 Day Notice issued by the property manager on April 5, 2012 which identifies the owner in the space provided for the name of the landlord. In the absence of the letter sent by the property manager, I am uncertain as to whether the rent cheques were to be made payable to the owner or the property manager.

Considering the tenant provided the owner with 12 post dated cheques for the year, I have accepted that the owner did not return the rent cheques to the tenant, and the 10 Day Notice indicates the landlord is the owner of the property, I find the landlord was in receipt of the rent cheque for April 2012. Therefore, I find there was not a basis for issuing the Notice on April 5, 2012 and it is cancelled.

It was undisputed that as of the date of the hearing, the landlord had not cashed the rent cheque for April. The tenant is authorized to put a "stop payment" on that cheque

and the cheque for May 2012 and deduct the cost charged to him by his financial institution from rent otherwise payable.

Despite cancelling the Notice and authorizing the tenant to deduct the cost of placing a “stop payment” on the April and May cheques, the landlord remains entitled to rent in accordance with the tenancy agreement and Act. The amount of payable by the tenant is addressed in the following section.

Rent Increase

Where a landlord wishes to increase the rent payable, Part 3 of the Act imposes restrictions on the timing and amount of the rent increase. In addition, rent may only be increased upon issuing a Notice of Rent Increase in the approved form.

Where a landlord and tenant negotiate and enter into a new tenancy agreement the former tenancy agreement comes to an end and the new agreement replaces the former agreement. The tenant will be required to pay the amount payable pursuant to the new agreement.

In this case, the landlord has taken the position that new tenancy agreements were entered into each year, starting June 1. I have considered the landlord’s position and make the following findings upon careful consideration of the landlord’s documentation.

The documents executed by the parties on May 24, 2010 and May 22, 2011 record the parties’ agreement to “extend the lease”. At issue is whether an extension of an existing lease is a new agreement. The Act does not define the term “extend” and I have referred to the ordinary meaning of the word, as it relates to contracts. The ordinary meaning of “extend” is to prolong or make longer. Therefore, where a contract is extended the duration of the original term is made longer.

I find that extending the lease, as indicated in the documents executed by the parties in May of 2010 and 2011, had the effect of making the term longer (ignoring the apparent error in the document signed May 24, 2010 that appears to extend the tenancy from June 1, 2010 to May 31, 2010). However, I find an extension of the original contract does not form a new agreement considering the meaning of the word “extend”. Therefore, I find the original contract remains in effect except that the term has been extended.

Since the original contract for tenancy remains in effect, I find the landlord was required to comply with the rent increase provisions of the Act by serving the tenant proper Notices of Rent Increase in order to increase the rent.

By not issuing Notices of Rent Increase I find the rent has not been legally increased in accordance with the Act. Accordingly, I find the monthly rent payable by the tenant remains at \$1,800.00 – the amount required under the tenancy agreement.

Section 43(5) of the Act provides that:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Taking into account the landlord has collected 12 rent payments of \$1,900.00 and 10 rent payments of \$2,000.00 from the tenant; I calculate that the tenant has overpaid \$3,200.00 to the landlord as of March 2012. Pursuant to section 43(5), the tenant is entitled to deduct this amount from the \$1,800.00 monthly rent payable.

To ensure recovery of the rent overpayment, the tenant is provided a Monetary Order with this decision. I also award recovery of the \$50.00 filing fee to the tenant. Therefore, a Monetary Order in the total amount of \$3,250.00 has been provided to the tenant with this decision. The tenant may satisfy all or a portion of the Monetary Order by withholding rent until such time the Monetary Order is satisfied.

Conclusion

The Notice to End Tenancy for Unpaid Rent issued April 5, 2012 has been cancelled.

The monthly rent is set at \$1,800.00 and the tenant is authorized to recover \$3,250.00 from the landlord for overpayment of rent and recovery of the filing fee. A Monetary Order has been provided to the tenant in the amount of \$3,250.00. The tenant is authorized to withhold rent otherwise payable until the Monetary Order has been satisfied. Should the tenancy end before the Monetary Order is satisfied the balance shall become payable by the landlord. The balance outstanding may also be enforced in Provincial Court (Small Claims) as an Order of the court.

The tenant is authorized to place a “stop payment” on rent cheques previously given to the owner for April 2012 and May 2012. The tenant is authorized to recover the amounts charged to him by his financial institution for doing so by deducting the costs from rent otherwise payable 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: May 4, 2012.

Residential Tenancy Branch