



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FF

Introduction

This hearing was scheduled to hear a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause; a request for monetary compensation and authorization to reduce 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.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the request to cancel the Notices to End Tenancy. I find that not all the issues identified on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. Therefore, I have only considered the tenant's request to cancel the Notices to End Tenancy and I dismiss the balance of tenant's application with leave to reapply.

During the originally scheduled teleconference I was able to hear from the parties and made a decision with respect to the 10 Day Notice. The hearing was adjourned in order to allow more time to hear the parties with respect to the 1 Month Notice. The parties were informed that I would not accept any new documentary evidence. When the hearing reconvened on June 20, 2012 the landlord stated that during the adjournment he determined that the landlord's ledger does not always reflect the actual date rent is received. Accordingly, the landlord was willing to withdraw the 1 Month Notice. The tenant agreed to the withdrawal. As the 1 Month Notice has been withdrawn by mutual agreement it is no longer of any effect.

In light of the above, the remainder of this decision deals with the 10 Day Notice.

Both parties had submitted late evidence to the Branch; however, the evidence was submitted to each other more than five days before the hearing. Nor did either party raise any concern or objection with respect to inclusion of the evidence. Therefore, I accepted and considered the documentary evidence of both parties that was submitted to the Branch before the originally scheduled hearing.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The tenancy commenced April 1, 2006 and most recently the tenant has been paying rent of \$1,055.00 per month. Rent is payable on the 1st day of every month.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated May 3, 2012 indicating the tenant failed to pay rent of \$93.42 on May 1, 2012. The Notice was posted on the tenant's door on May 8, 2012 and the tenant filed to dispute the Notice on May 10, 2012.

The landlord produced a ledger for the period of July 1, 2011 through May 3, 2012. The ledger shows monthly rent charges of \$1,055.00 per month until the month of May 2012 when the rent was increased to \$1,100.00. The ledger also shows the rent payments posted to the tenant's ledger during that period of time. As of May 3, 2012 the ledger shows a balance owed by the tenant of \$93.42.

The landlord submitted that the rent was increased pursuant to a Notice of Rent Increase served upon the tenant. The tenant denied that he was served with a Notice of Rent Increase increasing the rent to \$1,100.00 effective May 1, 2012. I noted the landlord had not included a Notice of Rent Increase in the landlord's evidence package. The landlord stated that he did not have a copy of the Notice of Rent Increase in front of him during the hearing.

The tenant was of the position the landlord's ledger is inaccurate. The tenant pointed out that he was awarded \$50.00 under a previous dispute resolution decision (file no. 784078) that the landlord has not accounted for in the ledger. I confirmed that the tenant was awarded the filing fee in the decision issued under file no. 784078 on December 19, 2011. The award does not appear in the landlord's ledger.

.Analysis

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

The landlord did not produce or otherwise obtain a copy of the Notice of Rent Increase issued to the tenant in order to establish the rent was increased by \$45.00 as of May 1, 2012. In light of disputed testimony concerning a Notice of Rent Increase, I find the ledger in itself is insufficient evidence to conclude the rent was increased by \$45.00 as of May 1, 2012.

The tenant was successful in establishing the landlord's ledger was inaccurate in that it did not reflect the filing fee awarded to the tenant under file no. 784078.

In light of the above, I find the landlord has not met his burden to show the tenant owes the amount indicated on the 10 Day Notice. Accordingly, I cancel the Notice with the effect the tenancy continues. As I have cancelled the Notice I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from rent otherwise payable to the landlord in satisfaction of this award. The landlord is responsible for reflecting this award in the tenant's ledger.

It is important to note that the issue to determine with this application was whether the landlord has substantiated the amount of rent owing as it appears on the 10 Day Notice by way of the evidence provided for this proceeding. I have not made a finding with this decision as to whether the rent remains at \$1,055.00 per month or has been legally increased to \$1,100.00 per month as of a particular date. The parties are at liberty to resolve that issue between themselves or by way of making a separate application, if necessary.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent dated May 3, 2012 has been cancelled. The tenant has been awarded \$50.00 and is authorized to deduct this amount from rent otherwise payable to the landlord.

The 1 Month Notice to End Tenancy for Cause dated May 3, 2012 was withdrawn by mutual consent and is no longer of any effect.

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: June 26, 2012.

Residential Tenancy Branch