



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, CNC, OLC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to dispute a rent increase; to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) or the tenancy agreement; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that on June 18, 2012 he emailed evidence to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the evidence was not served to the Tenant it was not accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch, copies of which were not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided is whether the Notice to End Tenancy for Cause should be set aside; whether the Landlord is entitled to increase the rent by \$50.00; and whether the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement that began on January 05, 2011 and continued until July 05, 2011; that they renewed the fixed term of their tenancy agreement so that it ended on July 05, 2012; and that the tenancy agreement indicates that the tenancy will continue on a periodic basis after the end of the fixed term. The parties agree that the tenancy agreement requires the Tenant to pay monthly rent of \$700.00 by the 4th day of each month, which includes utilities.

The Landlord and the Tenant agree that on May 29, 2012 a One Month Notice to End Tenancy for Cause was personally served to the Tenant, which declared that the Tenant was required to vacate the rental unit on July 04, 2012. The parties agree that the reason stated for ending the tenancy on the Notice to End Tenancy was that the Tenant has allowed an unreasonable number of occupants in the unit.

The Landlord and the Tenant agree that there is nothing in the tenancy agreement or the addendum that restricts the number of occupants in the rental unit, although they agree that the Tenant is the only tenant/occupant listed on the addendum. The parties agree that the rental unit is a one bedroom unit.

The Landlord wishes to end the tenancy because he believes the Tenant's two children are living with him. He stated that the Tenant advised him his children would only be staying with him on week-ends and he is concerned because they are using the laundry facilities at the rental unit, which increases the cost of his utilities.

The Tenant stated that his 12 year old son stays with him approximately 3 nights per week; that his 19 year old daughter stays with him approximately 4 nights per week; and that they sleep in bunk beds in his bedroom.

The Landlord and the Tenant agree that the Landlord provided the Tenant with written notice of his intent to increase the rent by \$50.00, effective July 05, 2012.

During the hearing the Landlord stated that the Tenant must move out of the rental unit because of increased utility costs and if he was unable to end the tenancy for cause he would serve the Tenant with notice of his intent to use the rental unit for his own purposes.

Analysis

Section 47(1)(c) of the *Act* authorizes landlords to end a tenancy if the Tenant has allowed an unreasonable number of occupants in the rental unit. The burden of proving that there are, or have been, an unreasonable number of people occupying the rental unit rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that it is unreasonable for a Tenant to allow his children to stay with him on a permanent or a temporary basis. In reaching this conclusion I was heavily influenced by the fact that the rental unit is large enough to accommodate a bed for each person and there was no evidence submitted that suggests it is unsafe for three people to occupy this rental unit. As the Landlord has failed to establish that he has grounds to end this tenancy because there are an unreasonable number of occupants in the rental unit, I grant the Tenant's application to set aside the Notice to End Tenancy for Cause that was served on May 29, 2012.

Section 13(2)(iv) authorizes a landlord to include a term in the tenancy agreement that

stipulates that the rent will vary depending on the number of people occupying the unit. While I accept that utility costs increase when more than one person is occupying a rental unit, I find that the Landlord did not include a term in the tenancy agreement that compensates him for those increased costs.

Section 43(1)(a) of the Act stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2012, is 4.3%. As the proposed rent increase of \$50.00 is greater than 4.3%, I find that the Landlord does not have authority to increase the rent by \$50.00. I therefore find that the rent remains at \$700.00 until it is increased in accordance with the *Act*.

Conclusion

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to \$50.00 compensation for the cost of filing this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the filing fee that was paid.

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 20, 2012.

Residential Tenancy Branch