



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent and for the Landlord to comply with the Act. The original hearing was held on September 4, 2012 and the hearing was adjourned to October 9, 2012 so that the Landlord could verify the information used to calculate the rent increase.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 7, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance. The Notice of Adjournment was sent to both parties from the Residential Tenancy Branch on September 6, 2012.

At the start of the original hearing on September 4, 2012 the Tenant said the unpaid rent was paid within the five days as required on the 10 Day Notice to End Tenancy; therefore the Notice is no longer in effect and the Tenant said they are withdrawing their request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said that she agreed the rent was paid and the 10 Day Notice to End Tenancy for Unpaid Rent was satisfied.

Issues(s) to be Decided

1. Has the Landlord complied with the Act?

Background and Evidence

This tenancy started in June, 2008 as a month to month tenancy. Rent is \$ 320.00 per month payable on the 1st day of each month.

The Tenant said they do not believe the Landlord has calculated the Notice of Rent Increase correctly and as a result the Tenant said they have made this application as they do not believe the Landlord has complied with the Act, regulations or tenancy agreement.

The Tenant continued to say the Landlord's calculation for the rent increase has errors in it. The Tenant said the first error is the item entered in the area for local government levies as "other liquid waste management fees" in the amount of \$4,533.83. The Tenant said this amount is unexplained in the Landlord's rent increase and the Tenant believes this item should not be part of the calculation for the rent increase. The Landlord said this item was for costs to repair the pumps and sewer pits. The Landlord said they understand now that this item should not be included in the calculation and they will remove it from the rent increase valuation.

The Tenant continued to say that he has reviewed the calculation for the hydro utility increase and he finds the explanation and supporting receipts difficult to follow. The Tenant said he believes there are errors in the calculations. The Tenant said if the Landlord cannot explain how the rent increase was calculated or if the Landlord cannot justify the rent increase calculations then the Landlord has not complied with the Act and the rent increase should not be imposed on the Tenants. The Tenant said the hydro receipts are from different meters and the bills do not match up to the meter readings. The Tenant said the Landlord has given him some receipts, but they are not explained and are difficult to follow. The Landlord said she has given the Tenant all the information that she has and it is not her responsibility to explain the rent increase calculations to the Tenant.

The Tenant continued to say the gas bills are also difficult to follow and he believes there are errors in the calculations done for the rent increase based on the increased cost of gas. The Tenant said he cannot follow the Landlord's gas utility increase calculation and the Landlord has not explained it to him so that he understands. The Tenant said he is not disputing that there have been cost increases to the Landlord and those costs will increase his rent, but he wants the rent increase calculation to be understandable and correct. The Landlord said she has included all the bills for hydro and gas for 2010 (the last year) and 2011 (this year) and her calculations are correct and she believes the information in her evidence package explains the rent increase as required to do so by the Act and regulations. The Landlord said she is willing to recalculate the rent increase with the item for other liquid waste management fee of \$4,533.83 removed from the calculation.

The Tenant said he would not accept that calculation as there are errors in the utility bills calculations including missing bills, meter reading inconsistencies and unexplained costs. The Tenant continued to say that until the Landlord can explain and justify that the rent increase is accurate the Landlord has not complied with the Act and the rent increase should not be implemented.

Analysis

The Landlord has completed and served the Tenants with a Notice of Rent Increase for a Manufactured Home Site on the approved form dated April 20, 2012. The Tenant is not disputing a rent increase, but the amount and the calculation of the rent increase on the Notice of Rent Increase dated April 20, 2012. I have reviewed the affirmed testimony of both parties and the written evidence of both the Landlord and the Tenants. The affirmed testimony from the Landlord indicates that the Landlord agrees an unintentional mistake was made when the item referred to as “other in the liquid waste management fees” in the amount of \$4,533.83 was included in the rent increase calculation. The Landlord continued to say that they would remove that amount from the calculation, but they would not change or remove other items from the rent increase calculation as they believe the remaining calculations are correct.

The Tenant agreed to the removal of the “other liquid waste management fee”, but the Tenant did not agree with the remaining calculation of the utility cost increases and requested the Notice of Rent Increase to be invalidated as the Tenant said Landlord’s calculations are incorrect. As a result I have reviewed the written evidence including all the receipts submitted by the Landlord and the Tenants. I will note that the evidence is not well organized and it is difficult to follow as some copies of receipts are blurred and some copies of the receipts show only part of the receipts. Some of my findings are as follows:

1. The item referred to as “other liquid waste management fee” in the amount of \$4,533.83 is for repairs to the pumps and pits and therefore is not an item that can be included as a Local Government Levy in a Notice of rent increase.
2. It appears the calculation for the gas receipts for 2010 in the amount of \$3,863.83 have been entered in the “this year” column of the calculation which should be for the 2011 gas receipts and the 2011 gas receipts in the amount of \$2,930.56 has been entered in the “last year” column which should be for the 2010 receipts. If this is the case the rent increase calculation will be incorrect.

3. As well it appears that two gas receipts for the 2010 year in the amounts of \$373.02 and \$434.55 are missing and there are two transcription errors in the calculation. The receipt for \$207.91 has been included in the amount of \$270.91 and the receipt for \$283.58 has been included in the amount of \$383.58. If this is the case the calculation for the rent increase is incorrect.
4. It appears the gas receipts for 2011 has one receipt in the amount of \$303.27 missing. If this is the case then the rent increase calculation may be incorrect or the Landlord may want to include the receipt so that the Tenant can understand that item.
5. It appears the hydro receipts for 2010 is missing one receipt in the amount of \$246.63. Again this could show the rent increase calculation to be incorrect or it may be just an oversight.
6. It appears the hydro receipts for 2011 are missing two receipts in the amounts of \$327.95 and \$409.05. Again this could show the rent calculation to be incorrect or it may be just an oversight.

Consequently because of the errors, what appears to be omissions and inconsistencies in the Landlord's Notice of Rent Increase dated April 20, 2012, I find the Tenants have established grounds to show that the Landlord has not complied with the Act, regulations or tenancy agreement and as a result I find the Landlord's Notice of Rent Increase is invalid. I order the tenancy to continue at the present rent in the amount of \$320.00. The Landlord is at leave to issue a new Notice of Rent Increase.



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Conclusion

The Landlord has not complied with the Act, regulations or tenancy agreement as the Notice of Rent increase dated April 20, 2012 has calculation errors in it which invalidates the Notice. The tenancy is ordered to continue at the present rent amount of \$320.00.

The Landlord is at leave to issue a new Notice of Rent Increase.

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*.

Dispute Resolution Officer