Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Taion Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding her dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlords' 10 Day Notice sent by the landlords by registered mail on June 14, 2013. The landlords confirmed that they received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 18, 2013. I am satisfied that the parties served one another with the above documents and their written evidence in accordance with the *Act*.

At the hearing, the landlords' agent (the agent) made an oral request for an Order of Possession should the tenant's application to cancel the 10 Day Notice be dismissed. While I can consider the landlords' oral request for an Order of Possession, I advised the parties that I cannot consider the agent's request for a monetary award of $930.00, for the recovery of 10 months of rent at a rate of $93.00 per month. No such application for dispute resolution for a monetary award has been submitted by the landlord. The matter of the landlords' request for a monetary award is not before me.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should an order be issued to determine the monthly rent for this rental unit? Is the tenant entitled to recover the filing fee for her application from the landlords?

Background and Evidence

The tenant testified that her periodic tenancy commenced on December 1, 2001. The current landlords purchased this rental property in October 2008. Although the tenant claimed that there was an initial written residential tenancy agreement for her tenancy, she entered no copy of that agreement into written evidence. She testified that her initial monthly rent in 2001 was set at $690.00, payable on the first of each month. The tenant testified that she paid a $307.50 security deposit for this tenancy on November 4, 2001. The landlords testified that they are unaware of any written residential tenancy agreement for this tenancy.

The tenant testified that her monthly rent increased over time to $743.00 by November 2010. She testified that the current landlords, including the landlords' manager who attended this hearing (the manager), allowed her to reduce her rent to $700.00 as of December 2010. This was to reflect work that she had been doing for the landlord to maintain and care for this rental building. In July 2011, the tenant's rent reduced to $650.00, to reflect the additional maintenance and caretaking duties that the tenant was performing for the landlords. The tenant provided examples of the types of work that she was performing for the landlords, which included the preparation of rent increase notices to tenants. The tenant entered into written evidence a document that maintained that the manager "didn't express any terms of the agreement in which my rental decrease was dependent on doing work in the building, and as such no end date was set or agreed upon." She entered into written evidence a copy of a "Notice of Rent Decrease" that she said she filled out and signed on the landlords' behalf on March 31, 2011. This Notice, revised from the standard Notice of Rent Increase forms used by landlords, allowed her to reduce her stated monthly rent from $743.00 to $650.00, effective on July 1, 2001. The landlords testified that they had never given the tenant authorization to sign this Notice on their behalf and further claimed that they had never seen this document until the tenant entered it into written evidence at this hearing. The tenant testified that the landlords had ample opportunity after the tenant reduced her rent payments to $650.00 to bring this to her attention if the landlords truly believed that she had been acting without their authorization or permission to reduce her monthly rent to $650.00.

The tenant entered sworn oral testimony and written evidence that the manager offered her formal employment with the landlords in September 2011. Although the tenant took courses and obtained a Building Services Management certificate in December 2011, she never did receive confirmation from the landlords that she was working for them. When employment was not forthcoming, her lawyer filed a claim on her behalf with the Employment Standards Branch (ESB) on February 27, 2013 seeking $6,056.04 in compensation from Landlord TEL.

The tenant entered into written evidence a copy of a February 26, 2013 letter from the landlord's lawyer, which read in part as follows:

> ...*My client's position regarding your claim is as follows:*
>
> 1. *At no time during the relevant period was an employer-employee relationship formed between yourself and my client through its agents. In fact, you have admitted that you took on some activities at the building to get experience so that you could get a job as a resident caretaker. The fact that you took courses confirms this.*
> 2. *At best, you volunteered to take on certain tasks at the building on the understanding that you would be given $100.00 reduction in your rent.*
> 3. *The building already had an employed resident caretaker during the time you claim you were the resident caretaker...*

The ESB claim was eventually resolved by way of an April 23, 2013 signed Settlement Agreement between the parties and the Director of the ESB, a copy of which was entered into written evidence by the landlords. According to the terms of that Settlement Agreement, the landlords agreed to pay the tenant "wages in the amount of $3,000.00 as full and final settlement of all matters under the Employment Standards *Act*." As noted at the hearing, the ESB Settlement Agreement is not binding on separate applications submitted under the *Residential Tenancy Act*. However, the fact that the settlement confirmed that payment was to be made to the tenant for wages on the basis of an employer/employee relationship suggests that the landlords have eventually conceded that there was such a relationship between them, a relationship for which they paid the tenant $3,000.00.

On January 7, 2013, the landlords' caretaker sent the tenant a note stating that his official documents showed that her current monthly rent was supposed to have been $750.00 for the period from October 1, 2012, rather than the $650.00 she had been paying. The manager sent the tenant another letter on January 21, 2013, advising her in part as follows:

> *...Because you were helping me to manage the property you are living in, I had agreed to reduce your rent from $750.00 to $650.00.*
>
> *Unfortunately, you have ceased to do any work since September, 2012. In accordance, the rent reduction should be terminated. Unless you can prove that you are still helping Mr. B (the resident caretaker) to manage the property, beginning on February 1st, 2013, you are requested to pay the full rent of $750.00...*

Subsequent to the issuance of the above documents, the landlords appear to have accepted that the tenant's monthly rent should be set at $743.00, the level the tenant formerly paid before her monthly rent was reduced.

The tenant's current application resulted from the landlords' attempt to recover what they claimed was unpaid rent of $837.00 owing as of June 13, 2013. This amount resulted from the landlords' claim that the tenant has underpaid her rent by $93.00 for each of the nine months preceding June 1, 2013. At the hearing, the landlords updated that amount to $930.00, to reflect the tenant's failure to pay the higher rent requested for an additional month.

The tenant confirmed that she has not paid the additional $93.00 per month that the landlords have requested in their letters and in their 10 Day Notice. However, the landlords have accepted the $650.00 July rent payment that the tenant has recently been paying. The tenant's July rent payment of $650.00 was accepted by the landlords on June 26, 2013. By accepting her July rent payment, the tenant testified that she believed the landlords were reinstating her tenancy. The landlords They testified that they made no notation on the receipt they issued that her payment was received for use and occupancy only and not to reinstate the tenancy.

Separate from the tenant's application to cancel the 10 Day Notice, the tenant has asked for a determination that the landlords' attempt to increase her monthly rent to $743.00 exceeds the allowable amount (3.8% for 2013) that a landlord can raise a tenant's rent without applying for authorization for an additional rent increase. She maintained that the landlords' January 21, 2013 request to raise her rent as of February 1, 2013 was illegal and unauthorized by section 43 of the *Act* and the *Residential Tenancy Act Regulation* (the *Regulation*). She sought a determination as to the correct amount of her monthly rent.

Analysis – Application to End Tenancy for Unpaid Rent

The tenant failed to pay the amount identified as unpaid rent in the 10 Day Notice in full within five days of receiving the 10 Day Notice to End Tenancy. However, the tenant did submit an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The landlords accepted the tenant's July 2013 rent payment of $650.00 without stating on the receipt that it was accepted for use and occupancy only. I find that the landlords' acceptance of the tenant's July 2013 rent payment of $650.00 effectively reinstated this tenancy and set aside the 10 Day Notice. For that reason, I allow the tenant's application to cancel the 10 Day Notice. The landlords' 10 Day Notice is no longer of force or effect.

Analysis – Tenant's Application for a Determination as to the Correct Amount for her Monthly Rent

Section 43 of the *Act* allows a landlord to apply to an Arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

Amount of rent increase

43 *(1) A landlord may impose a rent increase only up to the amount*

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection; or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution...

(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...

The *Residential Tenancy Regulation* (the *Regulation*) pursuant to the *Act* sets out the limited grounds for applying for an additional rent increase. In this case, the tenant has questioned whether the landlord has attempted to obtain an additional rent increase without applying for authorization to do so under section 43(3) of the *Act*.

There is undisputed evidence before me that at one time (i.e., November 2010) the monthly rent for this tenancy was set at $743.00. By July 2011, the tenant's rent had reduced to $650.00. As outlined above, the evidence regarding the terms surrounding the reduction in the tenant's monthly rent to $650.00 are unclear. Although the tenant maintained that she was working for the landlords to help them manage and operate this building, she also claimed that the monthly rent reduction was provided to demonstrate the landlords' appreciation for the assistance she was providing with this building. In her written evidence, she claimed that other long-term residents of this rental building were also granted reductions in monthly rent to demonstrate the landlords' appreciation for their long-term tenancies. However, she admitted at the hearing that these rent reductions were single digit monthly reductions and nowhere near the $93.00 monthly reduction she received. While the tenant claimed that the rent reduction was not specifically linked to the work she was performing for the landlords, she also submitted a successful claim through the ESB in which she obtained a monetary settlement for $3,000.00 in unpaid wages from Landlord TEL.

As recently as February 2013, the landlords' lawyer was expressing the landlords' position that there was never an employer/employee relationship between the tenant and Landlord TEL. However, this seems in stark contrast to the position as set out in

the manager's January 21, 2013 letter to the tenant. In that letter, the manager admitted that the tenant was helping her manage the property where she was living, thus leading to his agreement to let her reduce her monthly rent to $650.00 as of July 2011. As was noted above, the landlords' eventual agreement to pay the tenant $3,000.00 in wages as per the terms of the Settlement Agreement for the ESB claim also leads me to conclude that the tenant was employed in some way by the landlords from at least July 2011 until perhaps September 2012.

After considering the sworn testimony of the parties and their written evidence, I find on a balance of probabilities that the landlords' January 2013 request to increase the tenant's monthly rent was an attempt to obtain a reversion to the agreed rent established before any employment relationship began. As such, I dismiss the tenant's claim that the landlord has attempted to obtain an unauthorized additional rent increase beyond the levels allowed under the *Act* and the *Regulation*. In coming to this determination, I find that the most logical and reasonable explanation for the landlords' agreement to allow the tenant to reduce her monthly rent to $650.00 was to compensate her in part for work that she was doing for the landlords with respect to the maintenance and operation of this rental property. I do not agree with the tenant's claim that the rent reduction was so open-ended and vague that it constituted a permanent reduction in the regular amount due for her tenancy. Rather, I find it more likely than not that this reduction was intended to remain in place while the tenant performed employment or employment-related duties for the landlords to help them with this rental property. On the basis of the evidence before me, I find that the correct monthly rent for this tenancy should be $743.00, the amount that was previously paid for this tenancy before the landlords agreed to the reduction to $650.00.

In accordance with section 43(1)(b) and elsewhere in the *Act*, I am tasked with giving direction to the parties with respect to the amount of the rent to be applied to this tenancy. There is no dispute between the parties as to the landlords' claim that the tenant is no longer employed for the landlords to perform work-related tasks at this rental building. Any activities she continues to be involved in result from her own willingness to help out at her building and not by way of any employment or employment-related activities.

To provide further direction and to potentially avoid future disputes and applications from the parties, I have considered the effective date when the monthly rent for this tenancy should revert to $743.00. The landlords have attempted to have the rent change to $750.00, and later to $743.00 as of October 1, 2012. Although I have given the landlords' reason for selecting this date careful consideration, I do not find that a retroactive change in a tenant's monthly rent is in line with the notice provisions set out

in section 43 of the *Act*. These provisions require a landlord to give a tenant at least 3 month's notice of any requested rent increase, even those falling within section 43(2) of the *Act*. One may argue that the unusual circumstances of this situation do not require the landlords to provide 3 full month's notice to increase the tenant's rent. While this may not constitute an actual "rent increase" due to the reversion to an earlier level of monthly rent for this tenancy, the effect on the tenant is much the same, given the number of years that she has been allowed to pay a reduced rent for her rental unit. I do not believe that the failure of the *Act* or the *Regulation* to establish specific notice requirements for a situation as unusual as this one should enable a landlord to avoid the notification processes set out in the *Act* for all other types of rent increases.

Under a "normal" set of circumstances, a rent increase requested on January 21, 2013 could not take effect 11 days later, as was requested by the manager, but would have to wait a full three-plus months, until June 1, 2013. In deciding this matter, I have also taken into consideration the added complication that the manager's January 21, 2013 letter did not use any type of RTB form for issuing rent increases (or notifying the tenant of any appeal options available to her), nor did the manager identify the original $743.00 amount of monthly rent last paid by the tenant in or about November 2010. The purpose of the notification process established under the *Act* is to give a tenant some warning as to the amount of monthly rent that will be required in the future. In this instance, I believe that the tenant has been given some advance notice that her monthly rent may be increasing to the level that she was paying before the landlords agreed to reduce her monthly rent while she was undertaking work for them at this rental property. For these reasons and having regard to the time it may take for this decision to reach the parties, I find that the monthly rent for this tenancy is to revert to $743.00 as of September 1, 2013, the new anniversary date for future rent increases for this tenancy. I order that the tenant commence paying monthly rent of $743.00 for this tenancy as of September 1, 2013. On the basis of the determinations made in this decision, I also order that the landlords cease their efforts to recover $93.00 in monthly rent that they maintain is owing for the months prior to September 1, 2013. No such amounts are owing.

As the tenant has been partially successful in her application for dispute resolution, I allow her to recover her $50.00 filing fee from the landlords.

Conclusion

I allow the tenant's application to cancel the landlords' 10 Day Notice, which is of no force and effect. This tenancy continues.

I dismiss the tenant's application to determine that the landlords have issued an additional rent increase that is beyond the allowable levels as set out in the *Act* and the *Regulation*. I order that monthly rent for this tenancy as of September 1, 2013 be set at $743.00, payable in advance on the first of each month. I order that the anniversary date for this tenancy be set at September 1 of each year. I further order that the correct monthly rent from August 1, 2012 until August 31, 2013 is set at $650.00.

I allow the tenant to recover her $50.00 filing fee from the landlords. To accomplish this, I order the tenant to reduce her September 1, 2013 monthly rent payment from $743.00 to $693.00. I order that the tenant's monthly rent reverts to $743.00 on October 1, 2013.

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: July 19, 2013

Residential Tenancy Branch