



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on October 2, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 2, 2013.
- b. Whether the Tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2010, continue for a fixed term of one year and become month to month after that. The rent was originally set at \$1575 per month. The tenant paid a security deposit of \$800 at the start of the tenancy.

On May 30, 2011 the tenant received an unsigned letter in her mailbox from the landlord stating the rent would be increased to \$1600 effective September 1, 2011. The landlord did not use the approved form. The tenant did not question the rent increase and paid the rent including the increase.

On June 30, 2013 the tenant received another letter purporting to increase the rent effective October 1, 2013. The letter did not use the approved form. The tenant contacted the Residential Tenancy Branch and became aware of the requirement to use Form RTB-7. She advised the landlord. Later that day she received Notice of Rent Increase in the correct form that purported to increase the rent on November 1, 2013.

The tenant withheld \$650 of the rent for October and advised the landlord that since the rent increase that commenced on September 1, 2011 was not in compliance with the Act she had the right to apply the overpayment of rent to the rent for October 2013. The landlord served a 10 day Notice to End Tenancy for non-payment of rent. The balance of the rent for October was paid with 7 days of receiving the 10 day Notice.

In late September the tenant gave the landlord notice that she was ending the tenancy at the end of October. The tenant vacated the rental unit and ended the tenancy on October 31, 2013.

Analysis

Tenant's Application:

The relevant provisions of the Residential Tenancy Act provide as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

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(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

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(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 landlord submits the tenant does not have the right to withhold the rent as the Notice of Rent Increase given by the Landlord in May of 2011 contained all of the required information although it was not in the approved form. Further, the tenant agreed to pay the rent and it was a permissible amount. The landlord also submits the tenant's application to recover the cost of the filing fee should be dismissed as the tenant gave Notice to end the tenancy effective October 31, 2013.

After carefully considering the evidence presented I determined the Notice of Rent Increase given by the landlord was not in the approved form. As a result the landlord collected \$25 a month for the period September 1, 2011 to October 1, 2013 through a

rent increase that does not comply with the Act. Section 43(5) provides that the tenant may deduct this increase from rent. The tenant's payment of the balance of the rent for October plus the amount she was entitled to deduct occurred within 5 days of receiving the Notice to End Tenancy. As a result I ordered that the 10 day Notice to End Tenancy dated October 2, 2013 be cancelled. The tenant seeks to recover the sum of \$50 for the cost of the filing fee. The tenant has been successful with her application. I do not accept the submission of the landlord that the tenant did not need to file the within application as she intended to vacate the rental unit at the end of October. It was necessary for the tenant to dispute the Notice as it is possible the landlord could have obtained an Order for Possession by Direct Request that may have been effective before the end of October had the tenant not made the application to cancel the 10 day Notice to End Tenancy. **I order that the landlord pay to the Tenant the sum of \$50 for the cost of the filing fee.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Landlord's Claim:

Analysis - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order for Possession as the tenant has vacated the rental unit and the landlord has regained possession.

Analysis - Monetary Order and Cost of Filing fee

I dismissed the landlord's application for a monetary order in the sum of \$650 and the cost of the filing fee for the landlord's application as the tenant had the right to apply the

rent increase that was obtained by the landlord for period September 1, 2013 to October 1, 2013 as provided in section 43(5) of the Act.

Security Deposit

I determined it was not appropriate to make an order relating to the security deposit as the landlord has 15 days from the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing to file a claim should he wish to.

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: November 08, 2013

Residential Tenancy Branch

