



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNC, DRI, OLC, OPB

Introduction

This was a hearing scheduled as a result of a successful review application by the named landlords. The hearing was conducted by conference call. The named parties called in and participated in the hearing. The decision that was the subject of the review application was the tenants' application to dispute a rent increase, later amended to include an application to cancel a one month Notice to End Tenancy for cause. The decision dated October 17, 2013 cancelled a one month Notice to End Tenancy dated September 18, 2013. At original hearing the tenants withdrew their application to dispute a rent increase.

On November 20, 2013 the landlord's application for an order for possession was heard. In a decision of the same date the application was dismissed because the matter was *res judicata*, having already been determined by the October 17, 2013 decision that cancelled the Notice to End Tenancy.

The landlords applied for review of the October 17, 2013 decision and in a review consideration decision dated December 2, 2013 the application was granted and a review hearing was scheduled to be conducted as a new hearing. The arbitrator ordered that the tenant's application that was under review as well as the landlord's application for an order for possession be the subject of the review hearing because the landlord's application had been determined to be *res judicata* on the basis of the October 17th decision, now suspended pending the outcome of the review. I was appointed to conduct the review hearing and this is the matter that was before me at the conference call hearing held on January 29, 2014.

The matter is further complicated because in the interim there has been another application by the landlord leading to a decision dated January 7, 2014 that recorded a settlement agreement and granted an order ending the tenancy effective April 30, 2014. I was also informed that the landlords are in fact tenants of the owner of the rental property and throughout this dispute there has been a space sharing or subletting

arrangement between the parties. The parties have entered into a new tenancy agreement with the owner whereby they are all now tenants of the owner as landlord.

In the January 7, 2014 decision the arbitrator included the following as part of a purported settlement between the parties:

- d. There is a dispute between the parties as to the amount of the rent for September, October, November and December 2013 and this issue shall be determined either by agreement between the parties or by an arbitration that is scheduled to be held on January 29, 2014.

In fact the matter of the amount of rent for the four month period is not a matter that is before me at this hearing because it was not part of the landlord's claim in the application that is the subject of my review. The landlord's claim was solely for an order for possession; the matter of an order for possession has been settled and an order for possession effective April 30, 2014 has been granted. The tenant does not agree that this is an issue that I may determine. It is his position that the matter has been resolved. The landlords have not amended their claim to include a request for a monetary order and they may not do so by merely submitting documentary evidence.

At the hearing I advised the landlords that if they want to pursue a monetary claim for what they say is unpaid rent that was due pursuant to a lawful rent increase then they will have file an application for dispute resolution to advance such a claim. I cautioned the landlords at the hearing that a new claim may face hurdles, including jurisdictional issues and a potential argument that a new claim might be considered to be inappropriate claim splitting.

Because all the matters raised in the applications before me have been resolved by the January 7, 2014 decision and order, I confirm the original decisions in these two proceedings.

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: January 30, 2014

Residential Tenancy Branch

