



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for unpaid rent. An agent for the tenant and one landlord participated in the teleconference hearing.

At the outset of the hearing the tenant's agent requested an adjournment, as the tenant had passed away in November 2013, and the tenant's family was not aware of the death until mid-January 2014. At that time they notified the tenant's agent of the death, and asked her to request an adjournment. I determined that it was not necessary for me to grant the adjournment, based on the landlord's evidence in this hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The landlord stated that the tenancy began approximately nine years ago. The most current tenancy agreement began on February 5, 2010 as a fixed term ending January 31, 2013. The monthly rent during the fixed term was \$2950. After the end of the fixed term the tenancy continued on a month-to-month basis. The landlord stated that he and the tenant had a verbal agreement that as of February 1, 2013 the monthly rent would increase to \$3300. The landlord stated that the tenant paid \$3300 per month rent from that date, but there was no notice of rent increase issued or a written agreement from the tenant regarding the increased rent.

The landlord's evidence was that the tenant failed to pay \$350 of his rent for August, September and October 2013, and he paid no rent for November or December 2013, and in December 2013 the landlord served the tenant a notice to end tenancy for unpaid

rent. The landlord and the tenant agreed that the notice indicated that the tenant had failed to pay \$7650 in rent due on December 1, 2013.

Analysis

I found that the notice to end tenancy for unpaid rent was not valid, as the amount of rent owing indicated on the notice was incorrect.

I explained to the landlord that under the Act, if the landlord does not increase rent in compliance with the Act, or receive the tenant's written agreement of a rent increase, then the rent reverts to the amount set out in the tenancy agreement. Further, if the landlord receives any overpayment from the tenant, the tenant is entitled to recover that amount. In this case, I found that there was no valid rent increase, and therefore the tenant's rent remained at \$2950 per month. The tenant paid \$3300 rent from February 2013 to July 2013, and the tenant therefore was entitled to recovery of the overpayment, in the amount of \$2100; additionally, the tenant paid \$2950 in rent for September, October and November 2013. Therefore, as of December 1, 2013 the tenant would have owed only \$850 in rent.

As the tenant's application to cancel the notice was successful, the tenant is entitled to recovery of the \$50 filing fee for the cost of the application.

Conclusion

I cancel the notice to end tenancy for unpaid rent, with the effect that the tenancy continues until it ends in accordance with the Act.

The tenant is entitled to recovery of the \$50 filing fee, which the tenant may deduct from rent owed.

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: February 4, 2014

Residential Tenancy Branch