



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, OPR, MNR, FF, O
DRI, CNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords and the Tenants.

The Landlords applied for an Order of Possession for Landlord’s Use of the Property, for a Monetary Order for unpaid rent, to recover the filing fee, and for ‘Other’ issues.

The Tenants applied to cancel the notice to end tenancy for unpaid rent, to dispute an additional rent increase and to recover the filing fee. While the Tenants did not tick off the relevant box in the Monetary Order section, the Application discloses sufficient evidence of a monetary claim of \$3,400.00.

One of the Landlords and one of the Tenants named on the Application appeared for the hearing and provided affirmed testimony. No issues were raised at the start of the hearing in regards to the service of the Applications and the written evidence in accordance with the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure.

Preliminary Issues

At the start of the hearing the parties confirmed that the Tenants had vacated the rental suite on August 8, 2014. As a result, there was no need for me to deal with the Landlords’ Application for an Order of Possession and the Tenants’ Application to cancel the notice to end tenancy; these portions of the Applications were hereby dismissed. The remainder of the hearing focused on the monetary claims of both parties.

The Tenants’ claim was for a period of 34 months where they had paid the Landlords \$100.00 for each month in the form of an illegal rent increase. The undisputed evidence was that the Landlord had provided the garage as part of the rental unit but then had

sought to rent it out to a third party for which he was able to get a decent income. When this was put to the Tenant, the Tenant felt pressured into agreeing to pay \$100.00 each month extra in order to prevent this third party renting out the garage which was part of the original agreement.

The Tenant paid \$100.00 from March 1, 2011 to January, 2014 until she realized that under the Act she was paying an illegal rent increase. As a result, she reverted back to the original amount payable at the start of the tenancy. The Landlord claims in his Application \$600.00 for six months the Tenant reduced rent back to the original amount.

I explained to both parties the rent increase provisions outlined in Part 3 of the Act. In addition Policy Guideline 37 provides specific information to Landlords when considering a rent increase. I have reproduced the relevant portions of the guideline below:

“A tenant’s rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect”.

“A landlord who desires to increase a tenant’s rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. **The landlord must still follow requirements regarding the timing and notice of rent increases**

The tenant’s written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant’s agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount”.

“If a landlord collects a rent increase that does not comply with the Legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected”.

[Reproduced as written.]

During the hearing however, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of the dispute through mutual agreement.

Settlement Agreement

Pursuant to Section 63 of the Act, the arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Both parties agreed to settle both Applications in full as follows:

The Landlord agreed to pay the Tenant **\$1,000.00** in full satisfaction of both Applications by October 1, 2014. The Tenants are issued with a Monetary Order in the amount of \$1,000.00 which is enforceable in the Small Claims court **if** the Landlords fail to make payment.

The Landlords are cautioned to retain documentary evidence of payment made to meet the terms and conditions of the above agreement.

This agreement and order is fully binding on the parties and is in **full and final** satisfaction of **all** the issues associated with the tenancy.

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: August 12, 2014

Residential Tenancy Branch

