



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities.

The tenant, an agent for the landlord and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy started on February 01, 2014. The parties disagreed about the amount of rent for the unit. The landlord testified that the rent started at \$1,050.00 a month plus utilities and as the tenant failed to pay utilities the agreement was that the rent would go to \$1,200.00 a month which then included the utilities. The tenant testified that rent started at \$1,050.00 per month and included utilities. The landlord then put the rent up to \$1,200.00 a month without proper notice.

The landlord's agent testified that the tenant started to pay \$1,200.00 a month for rent and utilities in May, 2014. The tenant paid \$1,200.00 for May and June, 2014; however, the tenant only paid \$700.00 for July, \$750.00 for August and \$500.00 for September, The landlord issued the tenant with a 10 Day Notice to End Tenancy on September 02, 2014. This was served by registered mail on September 02, 2014. This Notice indicated that there is outstanding rent of \$1,650.00 which was due on September 01, 2014. The tenant had five days to either dispute the Notice or pay the outstanding rent. The Notice has an effective date of September 21, 2014.

The landlord's agent testified that the tenant did make a payment of \$1,300.00 in October, \$1,290.00 in November and \$1,050.00 in December. The landlord's agent testified that the extra payments made of \$190.00 were offset against the rent arrears. The tenant was told that the landlord was not reinstating the tenancy by accepting the rent paid after the 10 Day Notice was issued and was proceeding with their application for an Order of Possession. The landlord's agent requested an Order of Possession effective on December 31, 2014.

The tenant disputed the landlord's claims. The tenant testified that the rent was always \$1,050.00 which included utilities as shown on the shelter information form provided in documentary evidence from the tenant. The tenant testified that this was filled in by the landlord and signed by the landlord. The tenant testified that a few months into the tenancy the landlord spoke to the tenant and said they were increasing the rent to \$1,200.00. The tenant agreed that he did make some payments of \$1,200.00 because the tenant did not want the landlord to throw the tenant and his family out of the unit.

The tenant testified that he received a cheque from the Ministry for his rent and then paid that amount to the landlord. The tenant testified that in September he paid \$1,291.00 to the landlord for September's rent. At the beginning of October the Ministry started to put the rent cheque into the landlord's name and this was then paid directly to the landlord. The cheque for October was \$1,146.06, the balance of the rent was paid

by the tenant. The tenant testified that the landlord has never provided rent receipts to the tenant for rent paid in cash.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord's agent testified that rent was increased in May to \$1,200.00 to take into account the fact that utilities were then included in the rent. The tenant argued that utilities were always included in the rent when it was \$1,050.00. I have considered the testimony before me and find the landlord has provided no corroborating evidence to show that the initial rent of \$1,050.00 did not include utilities. This was a verbal agreement between the parties and by their nature disputed verbal terms are not clear and are often impossible for a third party to interpret. The tenant has however provided a form filled in and signed by the landlord for shelter information which states that the rent is \$1,050.00 and includes utilities. I find therefore that the rent of \$1,050.00 agreed verbally at the start of the tenancy did include utilities. Therefore the landlord is not entitled to increase the rent pursuant to s. 42(1) of the Act which states:

42 (1) *A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(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.

S. 43 of the Act states:

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 (3), 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.

(4) [Repealed 2006-35-66.]

(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.

Consequently I find it is likely that the landlord increased the rent in May, 2014 in contravention of s. 42 and 43 of the *Act* and in accordance with s. 43(5) of the *Act* the tenant may deduct the increase from rent.

With this in mind I find the tenant overpaid rent for May and June, 2014 by \$300.00. The tenant may therefore deduct this rent from the amount the landlord claimed was owed in accordance with the 10 Day Notice.

I am satisfied that there is rent outstanding of \$1,350.00 for July, August and September, 2014. The 10 Day Notice was issued on September 02, 2014 and served by registered mail. When a document is served by registered mail it is deemed served five days after it was sent. Therefore, the tenant is deemed to have been served the 10 Day Notice on September 07, 2014 and the effective date of the Notice is amended to September 27, 2014 pursuant to s. 53 of the *Act*. The tenant had five days to either pay the rent or dispute the Notice. If the tenant does not do either of these things then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date of the Notice. As this date has since passed and there remains outstanding rent; I find the landlord is entitled to an Order of Possession effective on December 31, 2014.

The landlord has not applied for a Monetary Order to recover any unpaid rent.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective by 1.00 p.m. on December 31, 2014. This Order must be served on the Respondent. If the respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: December 08, 2014

Residential Tenancy Branch

