



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, CNC, OLC

Introduction

This is an application to dispute a rent increase, a request to cancel a Notice to End Tenancy that was given for landlord use, a request to cancel a Notice to End Tenancy that was given for outstanding rent, and a request for an order for the landlord to comply with the Residential Tenancy Act.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties and the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues are whether or not to cancel a rent increase, and whether or not to cancel or uphold a Notice to End Tenancy that was given for landlord use, and the Notice to End Tenancy that was given for outstanding rent.

Background and Evidence

This tenancy began sometime in 1999, however by January 1, 2014 the rent had been increased to \$457.20.

On September 1, 2014 the landlords and tenant signed a new tenancy agreement in which the tenant agreed to pay \$650.00 rent starting January 1, 2015, however the landlord never served the tenant with a three-month notice of rent increase.

Mid-December 2014 the landlord received a phone call and was informed that the rent increase had not been approved by the tenant's funder.

On December 30, 2014 when the landlord went to pick up the rent, the tenants advocate offered a check for \$468.63 and not the \$650.00 the landlord was expecting.

Landlord stated that since they were going to be unable to get the \$650.00 rent that had been agreed upon, they decided they would serve the tenant with a two month Notice to End Tenancy and renovate the unit, so that they could rent it out for the \$650.00 amount to someone else. The two month Notice to End Tenancy was therefore served on December 30, 2014.

The landlord further stated that on January 7, 2015 she called the tenants advocate to ask what was happening and was told that they were taking her to arbitration. Therefore since the rent had not been paid in full she served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent.

The landlords are asking for an Order of Possession and request that both notices to end tenancy be upheld.

The tenants advocate testified that the tenant was illiterate and did not have the mental capacity to sign the tenancy agreement and therefore she believes that the rent increase should not be upheld.

The tenants advocate further testified that, when she informed the landlord they would not be paying the full \$650.00 requested, the landlord stated that she would therefore give a two month Notice to End Tenancy and claim to be doing renovations.

Analysis

Section 41 states the Landlord may only increase rent if done so in accordance with the Act.

In section 43 the Tenant may not apply to dispute a rent increase done in accordance with the Act (increase in accordance with the amount allowed under the regulations, as ordered by an arbitrator, or as agreed to by the Tenant in writing).

Even if the Tenant agrees in writing, section 42 requires that the Landlord must not increase the rent in a 12 month period, and must give at least three months' notice, and the Notice of the Rent Increase must be in the approved form.

If the Landlord does not use the approved form or give the required three months' notice, then they have breached section 41 and 42 of the Act, and the Tenant may file an Application to dispute the increase, even though they agreed in writing, because the Landlord did not comply with the Act.

The approved notice explains to the Tenant that the rent increase must not be within a year and they must have three months' notice.

In this case although the tenant did agree to a rent increase to \$650.00, the landlord failed to give the required three-month notice of rent increase in the approved form. Therefore the rent increase does not take effect on January 1, 2015 as agreed in the tenancy agreement, and will not take effect until the landlord serves the tenant with the required three-month notice of rent increase in the approved form.

I therefore will allow the tenants application to cancel the 10 day Notice to End Tenancy for nonpayment of rent, because for now, the rent is still \$457.20.

It is my finding however that, if the landlord does serve the tenant with the required three-month notice of rent increase in the approved form, the rent will increase to \$650.00 as agreed upon in the tenancy agreement. The tenants advocate claims that the tenant does not have the mental capacity to understand and enter into a tenancy agreement, however the applicant has provided no evidence to support this claim and therefore it is my finding that it is a valid tenancy agreement, and as stated above, the agreed-upon rent of \$650.00 will take effect three clear months after the landlord serves the required notice of rent increase.

As far as the two month Notice to End Tenancy is concerned, it's my finding that, the notice is not been given in good faith, and therefore that Notice to End Tenancy will be canceled as well.

Section 49(6)(b) of the Residential Tenancy Act states:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends **in good faith**, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

A claim of good faith requires honesty of intention with no ulterior motive, however if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

In this case, although the landlord has given the Notice to End Tenancy to renovate or repair the unit, the landlord openly stated that the reason she has done this is so that she can then re-rent the unit at a higher rent. Therefore it is my finding that the landlord did have an ulterior motive and this notice cannot be considered to have been given in good faith.

Conclusion

I order that the 10 day Notice to End Tenancy is hereby canceled and this tenancy continues.

I further order that the two month Notice to End Tenancy is hereby canceled and this tenancy continues.

I further order that the landlord comply with the Residential Tenancy Act and serve the required three-month notice of rent increase, if the landlord wishes to start collecting the \$650.00 rent agreed-upon in the tenancy agreement signed September 1, 2014.

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 28, 2015

Residential Tenancy Branch

