



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUNIPER APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received the landlord's 10 Day Notice posted on his door on May 1, 2015. The landlord's representatives (the landlords) testified that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 4, 2015. I find that the parties served one another with these documents in accordance with the *Act*. Both parties also agreed that they received one another's written evidence, had reviewed that evidence and were prepared to discuss that evidence at this hearing. I have taken the parties' written evidence into consideration as well as their sworn oral testimony in reaching my decision.

At this hearing, the landlords confirmed that they had not applied for dispute resolution. The female landlord advised that the only outcome they were seeking in this matter was to obtain a monetary award of the \$500.00, they maintained was owed to them as unpaid rent by the tenant. As the landlords had not applied for a monetary award, I advised them that I could not consider their oral request for the issuance of a monetary award in their favour as that issue was not properly before me.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to recover his filing fee from the landlord? Should any other orders be issued in this matter?

Background and Evidence

The landlords did not own this rental property when this tenancy commenced on October 1, 2003. The landlords entered into written evidence a copy of two pages of the only written Residential Tenancy Agreement (the Agreement) they have for this rental unit. This Agreement was signed on January 8, 2004. Monthly rent at the start of the tenancy was set at \$650.00, payable on the first of each month. The landlords did not dispute the tenant's claim that this was originally a one-year fixed term tenancy, which has converted to a periodic tenancy after the first year. The landlords continue to hold the tenant's \$325.00 security deposit paid on September 20, 2003.

At some point in this tenancy, the tenant started working for the owners of this property as a resident manager. The landlords entered written evidence and sworn testimony that the tenant's rent until January 1, 2014 was set at \$700.00. As of January 1, 2014, they maintained the tenant agreed to pay \$800.00 each month, once his employment with the landlords had ceased. As of January 1, 2015, the tenant stopped paying the landlords \$800.00 per month, reducing his rent to \$700.00, the amount that he believed was the correct monthly rent according to his Agreement, legal rent increases applied to his tenancy and the *Act*. The landlords objected to the tenant's actions to reduce his monthly rent to \$700.00.

The parties entered into written evidence copies of a Notice of Rent Increase document, which the male landlord said he handed to the tenant on two occasions. The initial version of this document identified a rent increase from \$700.00 to \$800.00 effective April 1, 2015. When the tenant rejected this Notice, the male landlord stroked a line through the \$800.00 figure on the Notice and revised it to \$717.50, to bring it into line with the allowable 2.5% increase for 2015. The male landlord testified that he handed the second version of this Notice to the tenant on April 2, 2015.

The landlord's 10 Day Notice identified \$500.00 as unpaid rent owing as of May 1, 2015. The landlord's 10 Day Notice showed \$100.00 owing for each of the first five months of 2015. The effective date on the 10 Day Notice was May 11, 2015. At the hearing, the landlords confirmed that the tenant has paid \$700.00 for each month in 2015.

Analysis

While I have turned my mind to all the documentary evidence, including documents, notices, rent ledgers and correspondence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Section 13(1) of the *Act* requires that landlords must prepare tenancy agreements in writing. The parties agreed that the only written agreement between the tenant and the landlords was the original Agreement signed by the tenant on January 8, 2004, for a tenancy that began over four months earlier. When parties disagree as to the terms of an oral agreement, the most reliable evidence is the written Agreement governing the tenancy, subject to any legal Notices of Rent Increase that may have been issued. The parties disagreed as to whether they had entered into an oral agreement to supplant the original Agreement, although there is one reference in the written evidence to an October 2010 rent increase. The landlord maintained that the correct monthly rent according to an oral agreement they reached with the tenant was \$800.00. The tenant testified that he believed the correct monthly rent for his rental unit was \$700.00.

Part 3 of the *Act* outlines the process whereby landlords may obtain rent increases. In order to obtain a rent increase, section 42(2) of the *Act* states that a landlord must notify a tenant at least three months before a rent increase is to take effect. Section 42(3) requires that notice to be in the approved form.

In this case, I noted at the hearing that the landlords relied on a 2001 version of the Notice of Rent Increase form on Ministry of Attorney General letterhead. The landlords provided a very poor copy of one page of that 2001 form; the tenant supplied a legible copy of that form. Although the male landlord dated the Notice or Rent Increase January 1, 2015, he testified that he did not hand it to the tenant until April 2015, when he claimed that rent, first in the amount of \$800.00, and second of \$717.50 was claimed to be due.

I find the landlords' Notice of Rent Increase form entered into written evidence by the parties so deficient that it has no legal effect. The form refers recipients to obtain further information on the reverse side of the form. Neither party provided a copy of what appeared on the reverse side of the form. Without the information on this very old version of a Notice of Rent Increase form, I am unable to determine if the form provided to the tenant properly described the process for contesting the landlord's Notice. Separate from the age of the form used by the landlords, the male landlord clearly did not complete the form properly or serve it to the tenant in time to obtain either of the rent increases requested. A properly completed and clear Notice of Rent Increase on the correct form and for the correct amount handed to the tenant on April 2, 2015 could not obtain the requested rent increase until August 1, 2015. In this case, crossed out figures, initialled by the male landlord, call into question the accuracy of a Notice of Rent Increase issued on a form that has not been used by the Residential Tenancy Branch for many years. This Notice certainly does not enable the landlords to retroactively increase the tenant's monthly rent as of January 1, 2015.

In the absence of any correctly completed Notice of Rent Increase form handed to the tenant, I find that the landlords have not proven that the tenant owes \$100.00 in monthly rent from January 1, 2015 until May 1, 2015. For these reasons and based on the tenant's admission that his monthly rent did increase from the original \$650.00 to \$700.00 at some point since his tenancy began in 2003, I find that the landlord has not established that the correct monthly rent for this tenancy is \$800.00. The landlord's creation of two versions of a Notice of Rent Increase form lends further support that the landlords have recognized that they needed to take some action to properly increase the tenant's monthly rent beyond \$700.00. For these reasons, I allow the tenant's application to cancel the 10 Day Notice, which is of no continuing force or effect.

I find that the correct monthly rent for this rental unit is \$700.00. Rent will remain at this level until such time as it is changed in accordance with the *Act*. As the tenant has been successful in this application, I allow him to recover his \$50.00 filing fee from the landlords.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice. The 10 Day Notice of May 1, 2015 is of no continuing force or effect.

I order that the correct monthly rent for this tenancy is \$700.00, an amount which remains in effect until such time as it is changed in accordance with the *Act*.

I order the tenant to withhold \$50.00 from a future rent payment in order to recover the tenant's \$50.00 filing fee for this application from the landlords.

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: May 26, 2015

Residential Tenancy Branch

