



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to dispute a Notice of Rent Increase and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified each landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally by the tenant's agent on April 16, 2015 in accordance with Section 89.

Based on the testimony of the tenant, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a Notice of Rent Increase and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 42 and 46 of the *Act*.

Background and Evidence

The tenant testified the tenancy began as a month to month tenancy on February 1, 2012 for the monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid.

The tenant submitted into evidence the following relevant documents:

- A copy of a Notice of Rent Increase issued by the landlords on December 29, 2014 stating that rent would increase from \$1,000.00 to \$1,025.00 effective April 1, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on April 1, 2015 with an effective vacancy date of April 11, 2015 citing the tenant was owing \$51.42 for rent that was due on April 1, 2015.

The tenant testified the landlord told her that he had posted the Notice of Rent Increase on her door on January 1, 2015. The tenant further stated that she had been away and did not receive the Notice until January 3, 2015.

The tenant also testified that she received the 10 Day Notice to End Tenancy for Unpaid Rent issued on April 1, 2015 on April 2, 2015.

Analysis

Section 42(1) of the *Act* stipulates that 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; or
- b) If the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with the *Act*.

Section 42(2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 42(4) states that if a notice of a rent increase does not comply with subsections 1 and 2 the notice takes effect on the earliest dated that does comply.

Section 88 of the *Act* allows a landlord to serve a document to a tenant by leaving a copy with the person; sending a copy by mail or registered mail to the address at which the tenant resides; sending a copy by mail or registered mail to a forwarding address provided by the tenant; leaving a copy at the residence with an adult who apparently resides with the tenant; by leaving a copy in a mailbox or mail slot for the address at which the tenant resides; by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or by transmitting a copy by fax number provided as a service address by the tenant.

Section 90 states that a document given or served in accordance with Section 88 or 89 of the *Act* is deemed to be received if given or served by:

- Mail, on the 5th day after it is mailed;
- Fax, on the 3rd day after it is faxed;
- Attaching a copy of the document to a door or other place, on the 3rd day after it is attached; or
- Leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Despite the date on the Notice of Rent Increase being December 29, 2014, from the undisputed evidence and testimony from the tenant I find the tenant received the

landlord's Notice on January 3, 2015. As such, to be compliant with Section 42(2) the earliest the rent increase could take affect was May 1, 2015. I therefore order the tenant is not responsible to pay a rent increase of \$25.00 for the month of April 2015.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

As the rent is due on the 1st of each month I find the earliest the landlord could have issued a 10 Day Notice to End Tenancy for Unpaid Rent would be April 2, 2015 to be compliant with section 46. As the landlord issued the 10 Day Notice on April 1, 2015 I find that the Notice does not comply with the requirements of Section 46 and is therefore an invalid 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

Based on the above, I order the 10 Day Notice to End Tenancy for Unpaid Rent issued on April 1, 2015 is cancelled and the tenancy remains in full force and effect.

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 25, 2015

Residential Tenancy Branch

