



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated June 16, 2015.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there exist good grounds for the Notice?

Background and Evidence

The rental unit is a two bedroom apartment in a 43 unit apartment building. The tenancy started in May 2012. The rent was \$1020.00 at the start of the tenant. The landlord holds a \$510.00 security deposit.

The Notice claims that the tenant failed to pay \$800.00 of rent that was due June 16, 2015.

The landlord's representative Mr. Z. explains that effective August 2013 the tenant's rent had been increased to \$1050.00 per month, pursuant to a lawful Notice of Rent Increase given in accordance with the *Residential Tenancy Act* (the "Act"). Then, in November 2015, again by lawful notice, the rent was increased to \$1070.00.

Mr. Z. indicates that the tenant failed to pay any of the first \$30.00 per month increase, causing a shortfall of \$450.00 over fifteen months. When the second increase was imposed, the tenant only paid \$1025.00 each month, leaving a \$45.00 per month shortfall over the eight months to June 2015. He indicates that the \$800.00 demanded in the Notice should properly have been for \$810.00.

The tenant says that after the first notice of rent increase he negotiated with the caretaker Mr. V.T. to keep his rent at \$1020.00 because he could not afford the increase.

He says that when he received the second Notice he negotiated with the caretaker to pay only \$1025.00.

There is no dispute but that he has been paying \$1020.00 per month since the first increase notice and \$1025.00 after second increase notice became effective.

In response to a question about the landlord's delay in pursuing the unpaid rent, Mr. Z. testifies that between December 2013 and the end of the next year, the landlord had computer trouble that prevented it from noting the rent shortfall or following it up.

In response to a question about the months before December 2013, the caretaker Mr. V.T. says that because the tenant was a family man he had told him to just try to pay the \$30.00 per month increase when he could, and that he suggested \$5.00 per month.

Mr. V.T. noted that the tenant does not speak English and that communications with him had been conducted through the tenant's sixteen year old daughter.

Analysis

First, it should be pointed out that a tenant alleging that the rent is other than what is stated in a tenancy agreement or lawful Notice of Rent Increase will have a very difficult burden to surmount. The written documents are much more persuasive as cogent evidence of the fact of what rent has been agreed to.

In this case, the tenant's argument is bolstered by the fact that he did not pay the first rent increase and nothing happened. There were no warning letters from the landlord. There were no ten day Notices to End Tenancy for unpaid rent. The tenant's argument is further supported by the fact that after the second rent increase fifteen months later, he consistently paid \$1025.00 per month, not the new rent of \$1070.00 and nothing happened until this ten day Notice issued in June. There were no warning letters or evidence of any other official communication.

I find that the landlord's explanation about an entire year of computer difficulties to be rather extraordinary, given that it is a professional property management company, in the business of receiving and tracking the payment of rent on behalf of its clients.

Until the eviction notice of June 16, 2015, a full twenty three months passed by after the first rent increase and during which time there was not formal correspondence with the tenant about arrears of rent. During that time it would appear that there was no effort made by the tenant to bring up to date any arrears of rent. He paid \$1020.00 every month and then \$1025.00 every month after the second increase.

Given these extraordinary circumstances, I find it most likely that at the time of the first rent increase, the rent increase was waived by the landlord. I find it most likely that at that time of the second increase an arrangement was made whereby the tenant would only pay \$1025.00 instead of the full \$1070.00.

Conclusion

The tenant is not in arrears of rent. His monthly rent is currently \$1025.00. The ten day Notice to End Tenancy dated June 16, 2015 is cancelled.

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 20, 2015

Residential Tenancy Branch

