



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase, for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate. The tenant gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being personally served with the Tenant's Application for Dispute Resolution, evidentiary material, and notice of this hearing on August 10, 2015, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the tenant and the tenant's advocate. The tenant testified that the landlord was served on that date and in that manner, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act*?
- Should the notice to end the tenancy given by the landlord be cancelled?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is

payable in advance on the 1st day of each month, according to the tenancy agreement, a copy of which has been provided, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord. The rental unit is a basement suite and the landlord resides in the upper level.

The parties orally agreed to a rent increase to \$850.00 per month in exchange for laundry use and extra cable channels for the tenant's television.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on August 4, 2015 by placing it between the doors that join the rental unit with the landlord's unit. A copy of the notice has been provided and it is dated August 3, 2015 and contains an effective date of vacancy of September 4, 2015. The tenant testified that the tenant disputed the notice and upon serving the landlord, the landlord cancelled the television cable, refused the tenant access to the laundry facilities and increased rent again to \$900.00 per month, which the tenant paid on September 1 and October 1, 2015.

The tenant seeks an order cancelling the notice to end the tenancy given by the landlord and recovery of the over-payment of rent for September and October, 2015, as well as recovery of the \$50.00 filing fee.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. In this case, the landlord did not attend the hearing, and there is no evidence before me that the landlord had cause to issue it, and therefore I cancel it and the tenancy continues.

A landlord may not increase rent until a tenant has been resident in a rental unit for a full year, and then must give the tenant 3 months notice in the approved form, unless the tenant agrees in writing. In this case, the landlord raised the rent and the tenant agreed, albeit not in writing, but agreed in exchange for cable television and laundry privileges. I accept the undisputed testimony of the tenant that the landlord increased rent again and removed the cable television and laundry privileges.

I have reviewed the tenancy agreement, and I find that rent in the amount of \$800.00 per month is payable on the 1st day of each month. I also accept the undisputed testimony of the tenant that the landlord increased rent again without any consent of the

tenant, and the tenant is entitled to recovery of \$100.00 for each of the months of September and October, 2015.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee.

I hereby grant a monetary order in favour of the tenant in the amount of \$250.00. This amount may be reduced from a future month of rent payable to the landlord, or may otherwise be recovered.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 3, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$250.00. This amount may be deducted from a future month of rent payable or otherwise recovered.

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: October 19, 2015

Residential Tenancy Branch

