



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, FF

Introduction

This hearing dealt with an application by the tenant to cancel a 10 Day Notice to End Tenancy for unpaid rent (the Notice), dated December 07, 2015, and to recover the filing fee.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to the claim and to make *relevant* prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Should the Notice to End dated December 07, 2015 be set aside?
Is the tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy began in 2007 and continues as a month to month tenancy. The parties agree the tenancy is subject to a written tenancy agreement of which I do not have benefit of a copy. None the less the parties agreed - each testifying that the payable monthly rent prior to December 01, 2015 was \$1510.00 since 2011. The landlord claims the tenant failed to pay a legal rent increase as of December 01, 2015 in the amount of \$38.00, as well as 4 months of additional parking fees at \$15.00 per month - for a sum of \$98.00. As a result the landlord served the tenant with a notice to end tenancy for non-payment of rent of \$98.00 all purportedly due on December 01, 2015.

The parties provided a copy of the Notice of Rent Increase dated August 2015 stating a rent increase of \$38.00 to be payable starting December 01, 2015, in the new amount of \$1548.00.

The landlord provided evidence of their reminders to the tenant that they were occupying more parking spaces than included in the rent and were therefore obligated to now pay the landlord an additional \$15.00 per month for additional parking. The parties agreed that the landlord's newly imposed parking charge is in addition to the payable rent under the tenancy agreement, and effectively not part of the rent.

The tenant disputes the rent increase, claiming that they were advised by the Residential Tenancy Branch that the Notice of Rent increase, so as to be legal, should only have been, in accordance with the regulations, for \$37.75 (vs \$38.00): pursuant to an allowable rent increase for 2015 in the amount of 2.5%.

The landlord and tenant disagreed in respect to the landlord's claim of an additional \$15.00 per month for additional parking. The tenant argued that the tenancy agreement simply stated that parking was included. The landlord partially agreed with the tenant, however argued the tenancy agreement did not state included parking as unlimited and that the tenant has been gradually taking up additional parking on the residential property and should now pay extra for parking.

Analysis

On preponderance of the document evidence before me and the parties' testimony, I find the landlord's Notice to End dated December 07, 2015 was issued in respect to \$38.00 for an imposed rent increase and \$60.00 for 4 months of new parking charges in the sum of \$98.00.

I find the landlord's Notice imposing a rent increase on December 01, 2015 of \$38.00 is for more than the rent increase permitted by regulation for 2015, of 2.5%. Section 43 of the Act states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. As a result I find the landlord's Notice of Rent Increase dated August 30th 2015 is not valid and therefore is of no effect. I find that the payable rent for December 01, 2015 was **\$1510.00 and it remains at this amount** until the landlord issues a new legal / valid Notice of Rent Increase in accordance with the permitted amount by regulation. In accordance with the Act, the tenant is entitled to recover any additional rent paid after *November 30, 2015* by a reduction of the overpayment from future rent.

In the absence of a copy of the tenancy agreement and according to the parties' testimony I find the landlord's Notice to End Tenancy for Unpaid Rent, imposing additional parking charges other than the agreed payable rent, is not a valid Notice for *unpaid rent*, and therefore does not operate to compel the tenant to comply with the Notice.

Effectively, as a result of all the above, the landlord's Notice to End Tenancy for Unpaid Rent or Utilities dated December 07, 2015 **is cancelled**.

The landlord is at liberty to issue another new valid Notice of Rent Increase in accordance with the current regulations. In addition, if the landlord has proof the tenant owes additional parking charges it is available to them to file for dispute resolution.

As the tenant was successful in their application they are entitled to recover their filing fee in the amount of \$50.00.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues with the payable rent as of November 30, 2015 until the landlord issues a valid Notice of Rent Increase in accordance with the regulations.

I Order the tenant may reduce future rent by a one-time amount of \$50.00 in satisfaction of their award of the filing fee.

This Decision is final and binding on both parties.

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: February 02, 2016

Residential Tenancy Branch

