



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FF, O, MNDC, OLC

Introduction

This is an application brought by the tenant(s) requesting an Order canceling a Notice to End Tenancy that was given for nonpayment of rent, requesting an Order canceling a Notice to End Tenancy that was given for cause, requesting an Order disputing an additional rent increase, requesting a Monetary Order, and requesting recovery of the filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must be related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel the Notices to End Tenancy, the dispute of the additional rent increase, and the recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

This tenancy began on January 7, 2016 with a monthly rent of \$1500.00, due in advance on the 29th of the previous month.

This is a fixed term tenancy agreement ending on May 31st 2016 and the parties checked off the box on the tenancy agreement that states at the end of the fixed length of time the

tenancy may continue on a month-to-month basis or another fixed length of time and, beside that clause was written “has option for another year at \$1650.00 per month plus utilities.

The landlord testified that the tenant has failed to pay the rent on time on at least five occasions and he is therefore requesting that the one-month Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that she has paid the rent one day late on numerous occasions because she does not get paid on time to pay her rent on the 29th; however she thinks it is unreasonable for the landlord to evict her for late rent when the rent is only late by one day each time.

Analysis

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent **when it is due** under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. **(My emphasis)**

Section 47(1)(b) of the Residential Tenancy Act states:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

In this case the tenant has admitted that she has failed to pay the rent when it is due on numerous occasions, and therefore pursuant to Section 47(1)(b) of the Residential Tenancy Act, the landlord has the right to end the tenancy, and I will not cancel the Notice to End Tenancy.

The tenant has paid the full rent for the month of July 2016, and therefore I will issue an Order of Possession for July 31, 2016.

With regards to the tenant's dispute of the additional rent increase, it is my finding that the landlords rent increase is not allowed under the Residential Tenancy Act.

Section 42(1) of the Residential Tenancy Act states:

42 (1) 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;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

In this case, the date that the rent was first established under the tenancy agreement was January 7, 2016, and therefore the landlord cannot increase the rent before January 7, 2017.

Conclusion

The tenants request to cancel a 1 month Notice to End Tenancy is dismissed and I have issued an Order of Possession to the landlord for 1:00 p.m. on July 31, 2016.

As stated above, it is my finding that the rent for this unit cannot be raised at this time and therefore the monthly rent remains at \$1500.00. It is therefore my finding that the 10-day Notice to End Tenancy is void as the full rent is paid.

The tenant's \$5000.00 monetary claim is dismissed with leave to reapply.

It is my finding that the tenant must bear the cost of the filing fee, as I have only allowed a small portion of her claim.

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: July 11, 2016

Residential Tenancy Branch