



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDC, FF

Introduction

On June 3, 2016 a hearing was conducted via the conference call between these two parties. The tenants had applied to dispute a rent increase and subsequently also seeks an order to cancel the 10 Day Notice for Unpaid Rent and recovery of the filing fee. The tenants did not attend. The landlord attended. The tenants' application was dismissed without leave to reapply. The landlord was granted an order of possession pursuant to section 55 of the Residential Tenancy Act. The tenant applied for a review of this decision. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the tenants' application.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. As both parties have attended and have raised no issues that would prevent the hearing from proceeding, I find that both parties are deemed served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

The tenants clarified that the application is to seek a determination regarding a notice of rent increase given by the landlord and to seek an order to cancel the 10Day Notice.

Issue(s) to be Decided

Are the tenants entitled to an order determining that the landlord's notice of rent increase was invalid? If so, are the tenants entitled to an order cancelling the 10 Day Notice?
Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2013 on a fixed term tenancy for 1 year then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 9, 2013. The monthly rent is \$1,800.00 payable on the 1st day of each month. A security deposit of \$900.00 was paid on August 9, 2013.

Both parties agreed that the landlord served the tenants with a notice of rent increase (NRI) dated January 23, 2016. The NRI states that the current rent of \$1,800.00 will be increased \$200.00 to \$2,000.00 effective on May 1, 2016.

The tenants provided testimony that the allowed increase for 2016 is 2.9% which is \$52.20 and that the landlord's increase is well over that amount.

The landlord confirmed the tenants' testimony and stated that this was the first time he has increased the rent and thought that as the tenant did not communicate anything to him until May 1, 2016 that the increase was accepted.

Both parties also confirmed that the landlord served the tenants with the 10 Day Notice dated May 1, 2016 which states that the tenants failed to pay rent of \$2,000.00 that was due on May 1, 2016. The 10 Day Notice also sets out an effective end of tenancy date of May 12, 2016.

The tenants stated that they had accepted a 2.9% increase and made payment to the landlord of \$1,854.00 (3%) which the landlord refused to accept. The landlord confirmed that he was refusing payment from the tenants.

Analysis

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director, or
- (c) agreed to by the tenant

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2016 is 2.9%.

Both parties have provided undisputed affirmed evidence that the landlord imposed a rent increase over that of the allowed 2.9%. As such, I find that the landlord's Notice of a Rent Increase (NRI) to be invalid. The NRI is cancelled and the rent is confirmed as \$1,800.00 until such time as the landlord may choose to give notice of a rent increase under the allowed terms.

I also note that section 43(5) allows tenants to recover rent increases that do not comply with the Act or regulations by deducting the noncompliant amount from rent. As such any amount collected by the landlord that is over the \$1,800.00 rent may be deducted from future rent until satisfied.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

As the landlord's notice for the rate of rent is invalid at \$2,000.00, I find that that the 10 Day Notice dated May 1, 2016 to be invalid. The tenants' application to cancel the 10 Day Notice is granted.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's Notice of Rent increase is invalid and cancelled.

The tenant's application to cancel the 10 Day Notice is granted. The tenancy shall continue. The tenants are granted a monetary order of \$100.00 for recovery of the filing fee.

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 28, 2016

Residential Tenancy Branch