



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNITEC INT'L TRADING INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, MNDC, OLC, O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied:

- to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) and/or the tenancy agreement;
- for "other"; and
- to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 20, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 41 pages of evidence that were submitted to the Residential Tenancy Branch on July 21, 2016 were sent to the company named as the Respondent, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and the evidence was accepted as evidence for these proceedings.

On July 28, 2016 the Tenants submitted two pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the company named as the Respondent by regular mail on July 28, 2016. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 88 of the *Act* and the evidence was accepted as evidence for these proceedings.

At the outset of the hearing the Tenant applied to amend the Application for Dispute Resolution by removing the individual named as a Respondent from the Application. The Application for Dispute Resolution has been amended accordingly and any Orders issued in regards to these proceedings will only name the company named as the Respondent.

Issue(s) to be Decided:

Should a Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?
Is there a need to issue an Order requiring the Landlord to comply with the *Act* if the Landlord wishes to end the tenancy?
Is there a need to issue an Order requiring the Landlord to comply with the *Act* if the Landlord wishes to raise the rent?

Are the Tenants entitled to compensation for loss of the quiet enjoyment of the rental unit?

Background and Evidence:

The Tenants submitted a tenancy agreement between the Tenants and the company named as the Respondent, hereinafter referred to as the Landlord. The tenancy agreement indicates that the tenancy began on August 01, 2014 and that rent of \$1,325.00 was due by the first day of each month.

The Tenant stated that in 2015 an agent for the Landlord informed the Tenants that the Landlord wished to increase the rent to \$1,450.00.

The Tenants submitted a series of emails exchanged between the parties in which:

- the agent for the Landlord discusses the reasons for wishing to increase the rent to \$1,450.00;
- the male Tenant informs the agent for the Landlord that the allowable rent increase for 2015 is \$33.13 per month, for a total of \$1,358.13;
- the male Tenant indicates a desire to sign a new tenancy agreement, effective September 01, 2016, for the new rent of \$1,358.13; and
- the agent for the Landlord appears to declare it "would be hard to renew the tenancy" for \$1,358.00.

The Tenant stated that on two occasions the Agent for the Landlord sent the Tenants a lease renewal in which the Agent attempted to have the Tenants agree to a rent increase. A copy of one of the lease renewals was submitted in evidence, in which the Landlord indicates rent for November 01, 2015 to October 31, 2016 would be \$1,355.00.

The Tenant stated that in July of 2015 the Landlord served the Tenants with a Notice of Rent Increase, which increased the rent from \$1,325.00 to \$1,355.00, effective November 01, 2015. He stated that the Tenants have complied with this Notice of Rent Increase.

The Tenant stated that the Landlord attempted to increase the rent again in July of 2016, from \$1,355.00 to \$1,390.00, effective July 01, 2016. He stated that the Tenants informed the Agent for the Landlord that the increase was premature and that they have not yet complied with this Notice of Rent Increase.

The Tenants submitted a copy of emails exchanged between the parties in April of 2016, in which:

- the male Tenant informed the Agent for the Landlord that the rent increase of \$1,390.00 was premature;
- the male Tenant stated that they will start paying rent of \$1,390.00 in November of 2016; and
- the Agent for the Landlord told the Tenants to "ignore the rent increase issue" and that he thought the Tenant's "case" started from August 01, 2015.

The Tenants submitted a Notice of Rent Increase, which increases the rent from \$1,355.00 to \$1,390.00, effective July 01, 2015. He stated that the Tenants have not complied with this Notice of Rent Increase.

The Tenants submitted an email, dated June 22, 2016, in which the Agent for the Landlord informed the Tenants they will “take back the suite for our own home hosting service”. He stated that the Tenants have not vacated the rental unit and he is aware that they are not required to vacate the unit on the basis of this email.

The Tenants are seeking compensation, in the amount of \$270.00, for loss of quiet enjoyment. The Tenant stated that the claim is based on compensation of \$45.00 per day for the six days he had to spend educating the Landlord on how to properly end the tenancy and how to raise the rent.

Analysis:

On the basis of the undisputed evidence I find that the Landlord and the Tenants entered into a tenancy agreement and that the monthly rent of \$1,355.00 is due by the first day of each month.

On the basis of the undisputed evidence I find that the Landlord did not serve the Tenants with a Two Month Notice to End Tenancy for Landlord’s Use of Property. As the Tenants have not been served a Two Month Notice to End Tenancy for Landlord’s Use of Property, I dismiss their application to set aside this Notice to End Tenancy.

Section 49(3) of the *Act* authorizes landlords to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit, providing the landlord provides proper notice of the landlord’s intent to end the tenancy. Section 49(7) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in the approved form when given by the landlord. RTB-32 is the approved form for ending a tenancy pursuant to section 49(3) of the *Act*. I find that the email the Landlord sent to the Tenants, dated June 22, 2016, is not on the approved form and does not, therefore, serve as proper notice to end the tenancy pursuant to section 49(3) of the *Act*.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead does not invalidate the form used. I find that the email, dated June 22, 2016, is missing highly relevant information, including the fact that a tenant has the right to dispute the notice to end tenancy. As the email is missing highly relevant information, I find that it cannot serve as proper notice to end the tenancy.

Section 44 of the *Act* clearly defines how a tenancy ends. In an attempt to provide clarity and stability to this tenancy, I Order the Landlord and the Tenant to comply with the *Act* in the event either party wishes to wish to end the tenancy. For the benefit of both parties, section 44 of the *Act* reads:

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Sections 41, 42, and 43 of the *Act* govern rent increases. In an attempt to provide stability to this tenancy, I Order the Landlord to comply with sections 41, 42, and 43 of the *Act* if the Landlord wishes to increase the rent.

Section 41 of the *Act*
reads:

A landlord must not increase rent except in accordance with this Part.

Section 42 of the *Act* reads:

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.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* reads:

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, the right to reasonable privacy; the right to freedom from unreasonable disturbances; the right to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and the right to the use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Guideline #6, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it. (Emphasis added)

On the basis of the submissions made by the Tenants and the testimony of the male Tenant, I find that the male Tenant understood that the Landlord had not given proper notice to end the tenancy. As the male Tenant understood that the tenancy had not been ended in accordance with the *Act*, I find that he was not obligated to vacate the rental unit or to educate the Landlord on how to properly end the tenancy.

On the basis of the submissions made by the Tenants and the testimony of the male Tenant, I find that the male Tenant understood that the Landlord could not increase the rent without proper authority. As the male Tenant understood that he did have to pay rent unless the rent was increased in accordance with the *Act*, I find that he was not obligated to pay any unlawful rent increases or to educate the Landlord on how to properly increase the rent.

I find that the time the Tenants spent educating the Landlord about rent increases and how to properly end a tenancy in accordance with section 49 of the *Act* was not necessary and was, essentially, entirely voluntary. As the Tenants were not obligated to educate the Landlord, I find

that the Tenants are not entitled to compensation for loss of quiet enjoyment of the rental unit for time spent educating the Landlord.

I find that the time spent educating the Landlord was a minor inconvenience that did not significantly interfere with the Tenants' right to the quiet enjoyment of the rental unit. I therefore dismiss the Tenants' application for compensation for a breach of their right to quiet enjoyment.

I find that the Tenants did not need to file this Application for Dispute Resolution, as they were well informed of their rights and obligations under the *Act*. I find, however, that the clarity provided by this decision mutually benefits both parties and that the parties should, therefore, share the cost of the fee to file this Application for Dispute Resolution, which is \$50.00 each.

Conclusion:

The Tenants have established a monetary claim of \$50.00, which is 50% of the fee paid to file this Application for Dispute Resolution. I authorize the Tenant to reduce one monthly rent payment by \$50.00, in full satisfaction of this monetary 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: September 07, 2016

Residential Tenancy Branch