



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, DRI, MNDC, OLC, FF

Introduction

The tenant applies to dispute a rent increase claimed to have been imposed in 2009 and for a monetary award for overpayments. He seeks to cancel a ten day Notice to End Tenancy for unpaid rent and for an order that the landlord comply with the law or the tenancy agreement.

The landlord applies for an order of possession pursuant to the Notice and for a monetary award for unpaid rent.

Issue(s) to be Decided

Has the landlord imposed an unlawful rent increase or reduced a service or facility entitling the tenant to a monetary award? Has the tenant failed to pay rent, justifying the Notice?

Background and Evidence

The facts of this matter are, for the most part, not in dispute.

The rental unit is a room in a boarding house. There are a total of seven rooms in the house. The tenant shares common cooking and bathroom facilities with one other boarder.

This tenancy started in about 2002. There is no written tenancy agreement. Currently the monthly rent is \$400.00. The landlord holds a security deposit. He says it is \$150.00; the tenant says \$200.00.

As a result of an error in his income tax return the tenant has suffered a significant reduction from his regular income supplement. He cannot afford to pay rent.

Initially he expected his tax appeal or review to right matters after a couple of months. He explained his situation to the landlord and the landlord granted him grace for the months of September and October awaiting the tax correction. It now appears that it will be at least four months before the tenant's income tax situation is corrected. The landlord, who also has bills to pay, cannot wait that long or take that risk.

As a result, the landlord issued the ten day Notice for unpaid September and October rent.

When the tenant first moved in, the landlord provided him with cable TV service; a basis bundle of television channels. As history raced forward, the tenant required a digital connection.

The tenant says that in January of 2009 he and landlord agreed that the tenant would himself increase his own service to digital and would pay the extra expense. He realized that he would now be paying for the full cost of cable but agreed in order to preserve his good relations with the landlord.

Indeed the relations have been good. The landlord has never imposed a rent increase.

However, the tenant feels the landlord is now being hard hearted by refusing to grant him more grace in paying rent and so he feels he should make this application.

The tenant is not a well man. He is 67 years old and, for the most part, confined to his room.

The landlord's daughter Ms. A.D. says that the tenant agreed to having his own internet package and that's why it has been years without any complaint about it. She says the property taxes alone on the property are \$5000.00 a year and the landlord cannot afford to forego rent.

Analysis

I find that the tenant did agree to assume the cost of his internet package back in 2009. He admits it himself. The landlord did not "impose" a rent increase. I consider the tenant's extraordinary delay in pursuing his claim to corroborative of that finding.

As a result, the tenant is not entitled to a monetary award against the landlord.

Section 26 (1) of the *Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

The tenant has not paid September or October rent and does not have a lawful ground for failing to do so.

As a result, the ten day Notice to End Tenancy was a proper Notice. By operation of s. 46 of the *Act* it has resulted in the ending of this tenancy on October 12, 2016 and the landlord is entitled to an order of possession.

The landlord is owed \$800.00 for the unpaid rent and he is entitled to a monetary award against the tenant in that amount, plus recover of the \$100.00 filing fee. There will be a monetary order against the tenant in the amount of \$900.00. The parties can determine the true amount of the deposit. If they cannot agree, either may apply for a determination of the true amount.

Conclusion

The tenant's application must be dismissed.

The landlord's application is allowed on the terms above.

This decision was rendered orally at hearing and 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: November 23, 2016

Residential Tenancy Branch