



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a 10 Day Notice to End Tenancy for unpaid rent or utilities; to dispute a rent increase; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person to the landlord's office on April 12, 2017. The Notice for reconvened hearing and the interim decision were sent to both parties by the Residential Tenancy Branch

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord at either of the hearings scheduled, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to dispute the 10 Day Notice to End Tenancy?
- Is the tenant entitled to dispute an additional rent increase?

Background and Evidence

The tenant confirmed that this tenancy started on November 01, 2015 for a fixed term tenancy that ended on October 31, 2016. Rent for this unit was \$850.00 per month. The landlord sent the tenant a Rent Increase Notice to increase the rent to \$871.25 effective from May 01, 2016. The landlord sent the tenant another Rent Increase Notice to increase the rent to 903.49 effective from May 01, 2017. A third Rent Increase Notice has been given to the tenant effective August 01, 2017 but which actually decreases the rent to \$881.00.

The tenant testified that the first rent increase notice was not a legal rent increase. It was given to the tenant within the first fixed term tenancy and increased her rent after seven months of her fixed term tenancy. The tenant paid the increased rent for 12 months and realizes that this is not permitted under the *Act*. The tenant seeks to recover the amount overpaid of \$21.25 a month for 12 months to a total amount of \$255.00.

The tenant testified that because the first rent increase notice was not a legal notice when the landlord increased the rent again the following May 2017 it was an illegal amount as it was based on the first illegal increase. The tenant therefore seeks to recover the amount overpaid of \$53.49 for May 2017.

The tenant testified that she has now received another rent increase notice effective August 01, 2017 which actually decreases her rent to \$881.00 which is lightly under the allowable amount allowed for 2017 based on her original rent of \$850.00.

The tenant testified that she was served a 10 Day Notice to End Tenancy for unpaid rent (the Notice). This was posted to her door and received on April 10, 2017. The Notice has an effective date of April 17, 2017. The tenant testified that the landlord was informed the tenant may pay rent late and agreed the tenant could do so. The tenant

testified that she paid the amount of \$880.00 on April 18, 2017 and does not now owe any rent to the landlord.

The tenant seeks to recover the overpaid rent of \$308.49 and the filing fee of \$100.00. The tenant also seeks an Order to set aside the Notice.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

With regard to the tenant's application to dispute an additional rent increase; I refer the parties to s. 42 of the Act which 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.

(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.

This tenancy started on November 01, 2015 for a fixed term tenancy which did not end until October 31, 2016; therefore, the earliest the landlord could impose a rent increase

would November 01, 2016. The landlord actually sent the tenant a Notice of rent increase which increased the rent on May 01, 2016 by \$21.25 per month. As this is not permitted under the *Act* then in accordance with s. 3(5) of the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. I therefore find the tenant is entitled to recover this overpayment of rent to an amount of **\$255.00**.

Further to this, the landlord sent a second Notice of rent increase to the tenant; while the timing of this Notice was within the year of the first notice as the first Notice was an illegal rent increase then this put the second increase in dispute. The second increase was made based on the first rent increase being imposed in May, 2016 when it should not have been imposed until November 01, 2016 and the amount of the increase was based on the illegal first increase. I therefore find the tenant is entitled to recover the overpayment made in May, 2017 of \$53.49.

With regard to the 10 Day Notice to End Tenancy, On page two of the Notice it informs the tenant that she has five days to either pay the outstanding rent or file an application to dispute the Notice. The tenant did file her application to dispute the Notice within five days but did not pay her rent for April within five days. The rent was not paid until April 18, 2017. If the tenant does not pay the rent within the allowable time frame then she is considered to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice shown on the first page of the notice which in this case was April 17, 2017. However, the tenant testified that the landlord agreed she could pay her rent later and as the landlord has not appeared to dispute that testimony then I accept the tenant's testimony that she was given permission to pay her rent on April 18, 2017.

As the tenant's application has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I find in favour of the tenant's application. The 10 Day Notice dated April 07, 2017 is cancelled and the tenancy will continue.

The tenant is entitled to recover the overpayment of rent to an amount of **\$308.49** and the filing fee of **\$100.00**. The tenant may deduct the amount of **\$408.49** from the rent for June, 2017.

The rent remains at \$850.00 per month until August 01, 2017 when it will increase by the amount shown on the third Notice Of Rent Increase. The tenant's rent for June, 2017 will be \$441.51. Rent for July will be \$850.00 and the increase will take effect on August 01, 2017

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: May 29, 2017

Residential Tenancy Branch