



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRIM ERP, RP, RR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated June 11, 2017.
- b. An order disputing an additional rent increase
- c. An order that the landlord make emergency repairs
- d. An order that the landlord make repairs
- e. An order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- f. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. The tenant's application for an adjournment was denied. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was sufficiently served on the Tenant on June 1, 2017 by posting. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing by registered mail to where the landlord resides on May 25, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated June 11, 2017?
- b. Whether the tenant is entitled to an order disputing an additional rent increase?

- c. Whether the tenant is entitled to an order for emergency repairs and/or repairs?
- d. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in September 2007. The tenant paid a security deposit of \$650 at the start of the tenancy. The rent prior to June 1, 2017 was \$1553.79 payable in advance on the first day of each month.

On February 26, 2017 the tenant was served with a Notice of Increase in the approved form that increased the rent in the sum of \$56.21 per month from \$1553.79 to \$1610 starting on June 1, 2017.

The tenant does not dispute that the Notice of Rent Increase was in the approved form and that the landlord is legally entitled to increase the rent as he has. However, the tenant withheld the payment of the rent increase of \$56.21 for the months of June 2017 and July 2017. The tenant seeks a reduction of rent because the tenant alleges the landlord failed to provide sufficient hot water and other deficiencies. The landlord disputes this. As a result of the failure to pay the full rent the landlord served a 10 day Notice to End Tenancy on the Tenant which provided that the tenant failed to pay \$56.21 for the months of June and July 2017.

After hearing the evidence of the tenant with respect to his reasons for not paying the rent increase I determined the tenant does not have a legal right to withhold the rent and if we proceeded with the hearing the tenant's application to cancel the 10 day Notice to End Tenancy would be dismissed and the landlord would have been entitled to an Order of Possession.

However, this is a long term tenancy. The tenant is taking care of his elderly mother who is partially paralyzed. The parties reached a settlement which I will record shortly. However, as a courtesy to the parties I referred to the relevant provisions of the Residential Tenancy Act.

Tenant's Application to Dispute an Additional Rent Increase

Section 43(2) of the Residential Tenancy Act provides as follows:

Amount of rent increase

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

The tenant acknowledged that the landlord used the approved form, the amount of the rent increase was calculated in accordance with the regulations and the landlord followed the correct procedure. Thus there is no basis for ordering the Notice of Rent Increase to be set aside.

Tenant's Application to Cancel the 10 day Notice to End Tenancy dated June 1, 2017

The tenant has refused to pay the rent increase of \$56.21 for the months of June and July 2017. Section 26(1) provides as follows:

Rules about payment and non-payment of rent

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.

The Act does not permit a tenant to withhold rent unless permitted under section 26(1). Thus had we proceeded with the hearing the tenant's application for an order to cancel the 10 day Notice to End Tenancy would have been dismissed and the landlord would have been entitled to an Order of Possession.

Settlement:

Rather than proceeding with the hearing the parties reached a settlement and they asked that I record the settlement as follows:

- a. The parties acknowledged that the Notice of Rent Increase that increased the rent from \$1553.79 to \$1610 is valid.
- b. The parties acknowledge the tenant owes the sum of \$112.42 for the months of June and July 2017.
- c. The tenant shall pay the arrears in the sum of \$112.42 by mailing a cheque by registered mail to the landlord in this sum on or before July 12, 2017.
- d. The landlord agrees that provided the tenant pays the arrears as provided above the landlord shall reinstate the tenancy.

- e. The tenant waives his claims for a reduction of rent to the date of this hearing.

As a result of the settlement I dismissed the tenant's application for a reduction of rent, for a repair order, for emergency repairs and to recover the cost of the filing fee without leave to re-apply. If the tenant fails to pay the arrears as provided above the landlord has the right to apply for an Order of Possession based on the 10 day Notice to End Tenancy.

This decision is final and binding on both parties.

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, 2017

Residential Tenancy Branch