



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 20, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on July 25, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 9, 2011, indicating a monthly rent of \$1,150.00, due on the first day of each month for a tenancy commencing on July 1, 2011;

- A copy of a Notice of Rent Increase form dated January 10, 2017 showing the rent being increased from \$1,150.00 to the monthly rent amount of \$1,194.00 as of May 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Monetary Order Worksheet noted that \$1,150.00 of the \$1,282.00 identified as owing in the 10 Day Notice was paid on July 12, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 8, 2017, with a stated effective vacancy date of July 18, 2017, for \$1,282.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 1:11 pm on July 8, 2017. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 11, 2017, three days after its posting.

Part 3, section 41 of the *Act* establishes that "a landlord must not increase rent except in accordance with this Part."

Part 3, section 43 (1) of the *Act* provides the following information regarding the amount of an increase:

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.

I note that the maximum allowable increase for 2017 was 3.7%. I find that 3.7% of \$1,150.00 is \$42.55. The landlord has issued a Notice of Rent Increase in the amount of \$44.00, which is greater than the amount permitted under section 43(1)(a) of the *Act*.

Policy Guideline #37 on Rent Increases states that “if a landlord collects a rent increase that does not comply with the Legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new 3 month Notice of Rent Increase, as the original notice did not result in an increased rent.”

As the landlord did not comply with Part 3 of the *Act*, I find that this sufficiently invalidates the Notice of Rent Increase dated January 10, 2017.

Therefore, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00, as per the tenancy agreement.

Section 46(4) (a) of the *Act*, regarding a landlord’s notice for non-payment of rent, states that “within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect.”

I find that the Monetary Order Worksheet submitted by the landlord indicates that the tenant has paid \$1,150.00 of the rent that was owed on the 10 Day Notice on July 12, 2017.

As the balance remaining on the 10 Day Notice consists of amounts resulting from the illegal rent increase, I find that the tenant has paid the rent owed in full, within the five days allowed by the *Act*.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of July 8, 2017, without leave to reapply.

The 10 Day Notice of July 8, 2017 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord’s application for a Monetary Order is dismissed, without leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of July 8, 2017, is dismissed, without leave to reapply.

The 10 Day Notice of July 8, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order, without leave to reapply.

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: August 04, 2017

Residential Tenancy Branch