



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR OLC

Introduction:

Only the tenant attended the hearing and gave sworn testimony. The tenant said she has been served several 10 Day Notices to End the Tenancy for non-payment of rent, the one disputed being dated October 1, 2017 to be effective October 18, 2017. The landlord serves them by posting them on her door. The tenant said they served the landlord with their Application for Dispute dated September 28, 2017 by courier (tracking number provided). She said the landlord did not claim it and it was returned. I find the landlord is deemed to be served with the Application pursuant to sections 89 and 90 of the Act. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the 10 Day Notices to End Tenancy and to order the landlord to comply with the Act.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. She described her unusual situation. She has been a tenant for about the last two years, rent is \$1050 and she paid a security deposit of \$500. In June 2017, the landlord requested them to sign a 3 month lease for she wanted them to move out for a short time while she did renovations. The expiry date on this lease was August 31, 2017 but the landlord then asked them to stay another month because she was not ready to do the renovations. On September 19, 2017, the landlord presented them with a new lease stating the rent was \$1600 after the renovations were done. They signed the lease but never got a copy and had to leave on holiday. She eventually said she would forward a copy but she had photocopied the lease and made some changes. She asked them to immediately increase their security deposit to \$800 and they did. The tenant complained that the landlord appeared to be acting illegally and wants the landlord to comply but was unsure of what results she expected from this hearing.

The tenant requests the ten day Notices to End Tenancy be cancelled. She said they have always paid their rent except for one mix-up with the bank over an interac transfer.

She provided a bank letter where they acknowledged it was their mistake. She said the landlord was threatening to get a bailiff to make them leave.

The tenant also requests a true original copy of the lease they signed and also that the landlord not increase the rent until all renovations are completed. She requests that if the landlord wants to end the tenancy for renovations that a legal section 49 Two Month Notice be served on them. She queried the increase in rent and I informed her that it was limited to 4% for 2018. If the landlord seeks more, they must bring an application to increase the rent beyond the legal limit unless the tenant agrees to the increase.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. The tenant says she owes no rent and the landlord did not attend the hearing or provide documents to prove she did. I set aside the Notices to End Tenancy dated October 1, 2017 and November 1, 2017. The tenancy continues. I note the landlord may not make the tenants leave or get a bailiff to regain possession unless the landlord obtains an Order of Possession through the Dispute Resolution process to end the tenancy legally.

In respect to the new lease, I find sections 13 and 14 of the Act apply to this situation. I find the landlord is required to provide a copy of the tenancy agreement to the tenant and it may not be amended unless both the landlord and tenant agree to the amendment. Sections 19 and 20 provide limits on deposits. A security deposit can be no more than half the monthly rent and a pet damage deposit also can be no more than half the monthly rent. Section 20 states the landlord must not require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement and 20(c) not require a pet deposit at any time other than when they enter into the tenancy agreement, or if the tenant acquires a pet (with the landlord's consent) during the term of the tenancy agreement. The tenant also complained of overcharges for NSF payments. I note Residential Tenancy Regulation # 7 limits a charge for an NSF fee to \$25 and \$25 for a late fee. These charges must be included in the tenancy agreement.

Rules on Rent increases are set out in sections 42 and 43 of the Act. A tenant must have 3 months Notice of the Increase in the approved form. A landlord is only entitled to increase the rent in the amount approved by the legislation. In 2018, it is 4%. If the landlord increases it by more than this amount, the tenant must agree or the landlord

must seek the additional rent increase through an Application to the Residential Tenancy Branch.

If the landlord requires the tenants to vacate so they may do renovations, they must serve the Two Month Notice to End Tenancy under section 49 and provide one month's free rent.

Conclusion:

I set aside and cancel the 10 Day Notices to End Tenancy dated October 1, 2017 and November 1, 2017. The tenancy continues. I find the tenant entitled to recover her filing fee and **order that they may deduct \$100 from rent for January 2018 to recover this fee.**

I HEREBY ORDER AS FOLLOWS:

- 1. The landlord must give an original, unchanged copy of the lease they both signed on September 19, 2017 to the tenant. No amendments may be made without the tenant's consent.**
- 2. If the landlord wants to end the tenancy and have the tenant vacate for renovations, they must consult section 49 of the Act and serve the Two Month Notice on the approved form and provide one month's free rent to the tenant.**
- 3. The landlord must not increase the rent unless in compliance with sections 42 and 43 of the Act which limits an increase to 4% for 2018 unless the tenant agrees otherwise.**
- 4. The landlord must comply with the limits and requirements for security and pet damage deposits.**

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: December 13, 2017

Residential Tenancy Branch