



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- dispute an additional rent increase by the landlord pursuant to section 43;
- seeking an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she personally served the tenant's application for dispute resolution hearing package on the corporate landlord on November 3, 2017 at their address for service. The tenant testified that the hearing package was accepted by the receptionist who confirmed she was authorized to accept service for the corporate landlord. The tenant submitted into written evidence a copy of the envelope served on the landlord, signed, stamped and dated by the landlord's employee. Based on the undisputed testimony of the tenant and in accordance with sections 88 and 89 of the *Act*, I find that the landlord was served with the tenant's application, amendment and evidentiary materials on November 3, 2017.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? Should an order be made regarding the disputed additional rent increase? Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The tenant gave undisputed evidence regarding the following facts. This tenancy began in September, 2016, originally for a fixed-term of one-year. A security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord. The tenant and landlord negotiated a new lease and this is now a month-to-month tenancy. The current monthly rent is \$1,352.00 payable on the first of each month. The rent was increased by a Notice of Rent Increase dated September 28, 2017 increasing the rent from \$1,300.00 to \$1,352.00 as of January 1, 2018.

A new corporate landlord purchased the rental building and took over as landlord in October, 2017. This new landlord has informed the tenant that the monthly rent is \$1,750.00. The new landlord has not served the tenant with a Notice of Rent Increase raising the monthly rent.

The tenant testified that there was a disruption to her internet and cable and the technician informed her that the cause of the disruption in service was the renovation work being undertaken by the landlord.

The tenant said that the experience of dealing with the landlord has been frustrating and stressful and that she has had to take time off from work in order to deal with the various tenancy issues.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. When the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice.

I find that in the absence of the landlord at this hearing despite being found to have been served in accordance with the *Act*, there is insufficient evidence in support of their notice to end the tenancy. I find that the landlord has not met the burden of proof in establishing entitlement to end this tenancy for cause on the basis of the 1 Month Notice. I allow the tenant's application to cancel the 1 Month Notice.

I find that the monthly rent for this tenancy is \$1,352.00 payable on the first of each month from January 1, 2018 onwards in accordance with the tenancy agreement and Notice of Rent Increase dated September 28, 2017. I find that there is no basis in the documentary evidence submitted for the landlord to increase the monthly rent to \$1,750.00 as the tenant claims they

threatened. I find that the rent for this tenancy is \$1,352.00 until changed in accordance with the *Act*.

I find that there is insufficient evidence to show that the landlord is in violation of the Act, regulations or tenancy agreement that requires an order that they comply. While I accept the tenant's evidence that dealing with the transition of landlords has been frustrating and stressful I find that their conduct does not reach the level where an order to comply is necessary. I dismiss this portion of the tenant's application.

As the tenant's application was primarily successful the tenant may recover the \$100.00 filing fee for this application from the landlord.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I find that the monthly rent for this tenancy is \$1,352.00 payable on the first of each month until changed in accordance with the Act.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: January 10, 2018

Residential Tenancy Branch