



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, DRI, & OLC**

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent/utilities, requesting an order for the landlord to comply with the tenancy agreement or Residential Tenancy Act, and disputing a rent increase.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not to cancel a Notice to End Tenancy that was given for nonpayment of rent and pet deposit, and whether or not the landlord complied with the Residential Tenancy Act when giving the tenants a rent increase.

Background and Evidence

This tenancy began on January 9, 2016 with a monthly rent of \$1600.00.

The parties agree that, in September of 2017, the landlord served the tenant with a notice of rent increase, in the proper form, raising the rent by \$65.00 per month as of January 1, 2018.

The parties also agree that on September 3, 2018 the landlord served the tenants with a 10 day Notice to End Tenancy for nonpayment of rent in the amount of \$65.00, and nonpayment of a security deposit in the amount of \$800.00.

The landlord testified that the tenants had failed to pay the rent increase on January 1, 2018, and had also failed to pay the pet deposit at the beginning of the tenancy, and therefore, on January 3, 2018, he personally served the tenants with a 10 day Notice to End Tenancy.

The landlord further testified that the tenant has failed to pay the increase for the month of February 2018 as well, and therefore he still wants this tenancy ended.

The tenant testified that they did not pay the \$65.00 per month rent increase, because the Residential Tenancy Act only allows a rent increase of 4% for 2018 which would amount to \$64.00.

The tenant further testified that they had previously told the landlord that the amount could only be \$64.00, and yet the landlord still put \$65.00 on the Notice to End Tenancy.

The tenant also testified that she has not paid any of the rent increase for the months of January 2018 or February 2018, because she believes that an increase of \$64.00 is excessive, especially since the Hydro bills for this rental unit are so high.

The tenant also testified that, at this time, they do not have the money to pay the outstanding rent for either January 2018 or February 2018 and they certainly did not have the money to pay the \$800.00 pet deposit claimed by the landlord on the Notice to End Tenancy, stating that at the beginning of the tenancy the landlord did not require them to pay a pet deposit.

Analysis

The parties agree that the rent for this unit was originally \$1600.00, due on the first of each month.

The parties also agree that the landlord did served the tenant with a notice of rent increase, on the proper form, and they also now both agree that the amount was incorrect by one dollar and should have been \$64.00, and not \$65.00.

It is my decision, pursuant to sections 43 & 62 of the Residential Tenancy Act that the landlord did have the right to raise the rent by 4% as of January 1, 2018, which amounts to a \$64.00 per month rent increase.

It is my decision therefore that the landlord does have the right to give a Notice to End Tenancy if that rent increase is not paid, however it is also my finding that the Notice to End Tenancy given by the landlord was misleading as it was stating that there was a total of \$865.00 outstanding as the landlord had also claimed \$800.00 security deposit on that notice.

The landlord had put the \$800.00 under this section for utilities, crossing of utilities and putting down pet deposit; however the landlord is not allowed to claim pet deposit on a 10 day Notice to End Tenancy for nonpayment of rent or utilities.

It is my decision therefore that, the tenants had reasonable grounds to dispute the Notice to End Tenancy because the landlord had put it misleading amount on the notice.

Section 52(e) of the Residential Tenancy Act states:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
(e) when given by a landlord, be in the approved form.

In this case it is my finding, that by striking out utilities, and putting pet deposit as a reason for ending the tenancy, the landlord has rendered this form ineffective as it is no longer in the approved form.

It is my decision therefore, pursuant to section 62 of the Residential Tenancy Act, that I will cancel the 10 day Notice to End Tenancy and this tenancy will continue.

It is also my decision, that I accept the tenant's dispute of the rent increase, as the increase amount should have only been \$64.00, and not \$65.00, and therefore the rent increase for this unit, taking effect January 1, 2018 will be 4% of the original \$1600.00, for an increase of \$64.00.

Both the landlord and tenant agree that the tenant has not paid any of the increase, and therefore as of today's date there is a total of \$128.00 in rent outstanding, which the tenant is required to pay immediately, and if the tenant fails to do so, the landlord does have the right to give a 10 day Notice to End Tenancy, in the proper form, for nonpayment of that \$128.00.

Conclusion

Pursuant to sections 46, and 52 of the Residential Tenancy Act I hereby order that the 10 Notice to End Tenancy dated January 3, 2018, is hereby canceled, and this tenancy continues.

Pursuant to sections 43 of the Residential Tenancy Act I allow the tenants dispute of the landlords rent increase and order that the rent increase taking effect January 1, 2018 is \$64.00 per month.

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: February 15, 2018

Residential Tenancy Branch