



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTECH CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNR MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

Parties are to upload any evidence they rely on, and it appears from the automated system that the tenant has attempted to do so, however none of the evidence reached the system or me prior to the hearing. The landlord has not provided any evidentiary material. The hearing is based on oral testimony only.

During the course of the hearing the tenant advised that the only compensation the tenant is seeking is recovery of the \$100.00 filing fee.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2015 and expired on March 31, 2016, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month was originally payable on the 1st day of each month, which was increased to \$881.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 8 units in an apartment complex.

The landlord's agent further testified that on January 16, 2017 the landlord served the tenant with a Notice of Rent Increase by regular mail along with a letter from the landlord, which increased rent from \$850.00 per month to \$881.00 per month effective May 1, 2017. The tenant contacted the landlord's agent asking for a concession. The landlord's agent contacted the owner who agreed to delay the increase for 6 months to assist the tenant's financial situation. The landlord's agent contacted the tenant by telephone to advise that the owner was agreeable.

However, the 6 month term expired on October 31, 2017 and the tenant did not pay the increase on November 1, 2017. The landlord's agent contacted the tenant on November 6 by email saying that the rent was short \$31.00. The tenant replied mentioning a letter that neither of the parties could locate. Later, the tenant asked for a copy of a letter that said the increase would be effective November 1, but the landlord had not sent a letter; the parties discussed it on the phone in March.

The tenant has paid the increased amount of rent consistently commencing with December, 2017, but still has not paid the \$31.00 increase for November. The landlord has not issued a receipt indicating that the rent money was being received as use and occupancy only.

The tenant testified that she was out of the country when the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door, and found it upon returning home about midnight on December 10, 2017. The tenant filed the dispute the next day.

The tenant agrees that the landlord gave a concession from the Notice of Rent Increase, however no one told her that it was only for 6 months; the tenant believed it would be on hold until further notice. The tenant expected she would get another notice, and asked the

landlord's agent how she was supposed to know. The landlord's agent replied that the tenant had already been served with the Notice of Rent Increase.

Analysis

Firstly, I accept the undisputed testimony of the tenant that the tenant was out of country when the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental unit. I also accept that the tenant disputed the notice as soon as possible upon receiving it, and I grant the tenant the extra time to dispute it.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for the tenant's failure to pay the increased amount of rent.

Where a landlord accepts rent beyond the effective date of such a notice, the landlord must make it clear to the tenant that either the money is being accepted for use and occupancy only, or that the acceptance of rent money serves to reinstate the tenancy. The landlord did not do so in this case, and as such, I find that the landlord has effectively reinstated the tenancy, and the notice should be cancelled.

The tenant has not disputed the rent increase, and I make no orders or findings with respect to the validity of the increase.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 30, 2017 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00 and I

order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 01, 2018

Residential Tenancy Branch