



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, MNDC, CNC

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent, received January 24, 2018. She also seeks to dispute a rent increase and for a monetary award for the return of overpaid rent and for veterinary bills. By amendment she seeks to cancel a one month Notice to End Tenancy dated January 31, 2018 given alleging repeated late payment of rent.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord improperly imposed a rent increase? Has either of the Notices been given for lawful and proper reasons? Is the tenant entitled to recover overpaid rent or money she has paid for a veterinarian's services?

Background and Evidence

The rental unit is a two bedroom basement suite in a house. The landlord rents the upper portion of the home to others.

The tenancy started in early January 2017. The tenant found the accommodation through an ad. The ad stated that dogs were not allowed. The tenant says she didn't see that part of the ad.

The parties signed a written tenancy agreement in the government form for a fixed term tenancy for one year at a rent of \$1500.00 per month and a security deposit requirement of \$750.00.

A day or two later the landlord discovered that the tenant had a dog. Discussion ensued about getting rid of the dog or finding another place. As a result the parties entered into a new, replacement tenancy agreement on a month to month basis at a rent of \$1650.00 plus a \$250.00 pet damage deposit.

The tenancy agreement provided that the rent was to be paid on the first of each month however, the parties made an arrangement for the tenant to provide post dated cheques of \$850.00 each for the eighth and the twenty-second of each month.

There is no dispute but that on many occasions the tenant obtained the landlord's agreement to wait a few days to cash a current rent cheque.

In January 2018 the tenant requested that the landlord hold off on cashing the January 8 cheque until January 22. The landlord called the tenant on January 22 to confirm that he would cash the two rent cheques; the January 8 and the January 22 but the tenant did not pick up nor respond to his messages.

The landlord cashed the cheques and both were later returned for insufficient funds in the tenant's account. On January 23 the landlord issued the ten day Notice for non payment of rent.

The tenant says she finally made good on the cheques on January 31.

At this hearing the landlord reviewed the rent payment history showing that over the last year well in excess of three of the tenant's rent cheques were returned marked insufficient funds.

The tenant says that after she moved in a portion of the carpet in her rental unit began to smell of cat pee. As well, she says that the landlord or his wife placed marrow bones outside her door and that her dog chewed them one stuck in his intestines. The result was a significant veterinarian bill she thinks the landlord should pay.

The landlord denies any problem with the carpet and says his wife scrubbed it clean before the start of this tenancy.

He says that though the tenant was supposed to care for the yard, his wife ended up raking it. She found dog feces and a variety of bones. The bones were placed under the deck.

He says the tenant was “always” saying her dog was sick to justify late rent payments.

Analysis

Rent Increase

Part 3 of the *Residential Tenancy Act* (the “*Act*”) sets out strict rules for a landlord to impose a rent increase. Those rules do not apply to circumstances where a landlord and tenant mutually agree to a higher rent.

The evidence does not establish that the landlord imposed a rent increase in this case. The rental unit was offered on the basis that the tenant would not have a dog. The tenant did have a dog. The conflict was resolved between the parties by a higher rent and conversion to a month to month tenant that would permit the tenant to find another place compatible with dogs and not have to wait until the end of the fixed term tenancy originally agreed to.

Ten Day Notice

Section 46 of the *Act* provides that if a tenant does not pay rent on the day it is due a landlord may issue a ten day Notice to End Tenancy. Upon receiving it a tenant has five days to either pay the rent in full or apply to dispute the Notice.

In this case the tenant did apply to dispute the Notice within the five day period. She disputes the Notice on the ground that her rent was not \$1650.00 but only the \$1500.00 charged under the first agreement. As has been held above, the second agreement was a valid and binding agreement between the parties and so the \$1650.00 rent was not an unlawful rent increase.

As a result, the ten day Notice to End Tenancy was a valid Notice. By operation of s. 46 it has had the effect of ending this tenancy ten days after receipt: on February 3, 2018.

One Month Notice

As this tenancy has ended by operation of s. 46, the validity or effect of the one month Notice need not be considered.

Rent Return

As it has been determined that the lawful rent was \$1650.00 per month, the tenant is not entitled to recovery rent money.

Veterinarian's Bills

It has not been shown that the landlord place the bones in the yard or that the landlord somehow caused or promoted the tenant's dog to consume them. Nor has it been shown that a dog with a bone poses a danger to the dog. It is an unfortunate circumstance but the landlord has not been proven to be the cause.

Carpet

On the conflicting evidence the tenant has not proved on a balance of probabilities that there was a smell problem with a carpet in the rental unit.

Conclusion

The tenant's application must be dismissed.

This tenancy ended on February 3, 2018 by operation of the ten day Notice.

By operation of s. 55 of the *Act*, I am compelled in these circumstances to issue the landlord an order of possession for the rental unit.

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 28, 2018

Residential Tenancy Branch