



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, CNL, MNDC

Introduction

This hearing was convened in response to two applications and an amendment by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. An Order cancelling two notices to end the tenancy for unpaid rent - Section 46;
3. An Order cancelling a two month notice to end tenancy for landlord’s use - Section 49; and
4. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the Landlord increase the rent in accordance with the Act?

Are the notices to end tenancy for unpaid rent valid?

Is the notice to end tenancy for unpaid rent for landlord’s use valid?

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The Tenant states that the tenancy started in June 2013. The Landlord does not know the tenancy start date having taken over the rental unit in April 2014. The Parties agree

that at the Landlord is holding a security deposit of \$250.00. The Tenant states that this was paid at the outset of the tenancy. The Tenant states that rent of \$1,040.00 is currently payable on the first day of each month.

The Landlord states that the Tenant's rent was increased to \$1,080.00. The Landlord states that the form used to increase the Tenant's rent was not on a form provided by the Residential Tenancy Branch. The Tenant disputes the rental increase.

The Landlord states that on March 2, 2018 he served the Tenant with a 10 day notice to end tenancy for unpaid rent for unpaid rent of \$1,080.00. The Landlord agrees that the Tenant paid \$1,040.00 for March 2018 rent. The Landlord states that on April 26, 2018 he served the Tenant with another 10 day notice to end tenancy for unpaid rent of \$40.00 due April 2018. The Landlord agrees that the Tenant paid rent of \$1,040.00 for April 2018. The Landlord agrees that the two notices to end tenancy for unpaid rent were based on the increased rental amount of \$1,080.00. The Tenant seeks a cancellation of these notices to end the tenancy for unpaid rent.

The Landlord states that on March 31, 2018 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice") by posting the Notice on the Tenant's mailbox. The reason set out on this notice is that the Landlord or a close family member of the Landlord intends in good faith to occupy the unit. The Landlord states that his son will be moving into the unit. The Notice is signed by the Landlord and sets out an effective date of June 1, 2018. The Landlord states that he served a second two month notice for landlord's use on April 27, 2018 by posting this notice on the door. The Landlord states that he did this to correct the move-out date to June 28, 2018. It is noted that this second notice to end tenancy for landlord's use does not include any stated reason.

The Tenant states that the first notice to end tenancy for landlord's use dated March 31, 2018 was not received until April 26, 2018. The Tenant she is no longer disputing the

notice to end tenancy for landlord's use and does not dispute that the Landlord's son is moving into the unit. The Tenant states that she will move out of the unit on June 30, 2018.

The Tenant states that the Landlord is refusing to pay the Tenant the equivalent of one month's rent for having ended the tenancy for landlord's use. The Tenant claims \$1,040.00. The Tenant confirms again that she will be moving out of the unit on June 30, 2018 and will not pay June 2018 rent. The Landlord indicates that it understands that the Tenant is entitled to the one month's rent.

Analysis

Section 42(3) of the Act provides that a notice of a rent increase must be in the approved form. The Landlord used a form that is not the same as the approved form provided by the Residential Tenancy Branch (the "RTB") form that is noted as #RTB-7 (2017/12). As the Landlord did not use the current and approved form provided by the RTB I find that the Landlord has not effectively increased the rent. As such I find that the rent remains at \$1,040.00 until increased in accordance with the Act. As the notices to end tenancy for unpaid rent indicates that the Tenant owes an amount greater than the rent payable and as the Landlord has confirmed that the Tenant has paid the \$1,040.00 for each of the months that the notices were issued I find that the notice to end tenancy for unpaid rent are not valid and I cancel them.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(1.1) of the Act provides that a tenant who received a notice to end tenancy for landlord's use of property may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord. As the Landlord has ended the tenancy for landlord's use I find that the Tenant is entitled to the equivalent of one month's rent and that the Tenant

may withhold the last month's rent in satisfaction of the Landlord's obligation to pay this amount to the Tenant. As the Tenant has indicated that it will withhold rent for June 2018 and as the Landlord indicates that it understands that the Tenant can withhold this rent, I dismiss the claim for compensation of one month's rent.

Section 49(2) of the Act provides that a landlord may end a tenancy for landlord's use of the property by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 53(2) of the Act provides that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. Even if the Landlord did not serve the first two month notice to end tenancy for landlord's use until April 26, 2018 given the undisputed evidence that rent is payable on the first day of each month I find that the effective date of the first notice for landlord's use is automatically corrected to June 30, 2018. Given the Tenant's evidence of not disputing the end of the tenancy for the reason stated on the first notice I find that the first notice is valid and that the second notice to end tenancy for landlord's use is no longer relevant.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved

form. As the first notice complies in form and content and has been found to be valid I find that the Landlord is entitled to an order of possession. I therefore grant an Order of Possession to the Landlord effective 1:00 p.m. on June 30, 2018.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on June 30, 2018.

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: May 25, 2018

Residential Tenancy Branch