



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC, RP, RR
OPRM – DR, FFL

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated May 4, 2018
- b. A monetary order in the sum of \$33,008.16
- c. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- d. An order that the landlord provide services or facilities required by law
- e. An order that the tenant is entitled to an order for the reduction of rent.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1430
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on May 4, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant was personally served and served by registered mail on the landlord. I find that the Application for Dispute Resolution filed by the landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides.

Preliminary Matters:

The Tenant testified he mistakenly named his infant son as an applicant in his Application for Dispute Resolution and he wished to have his son removed from the Application. The landlord consented. I ordered that the Application for Dispute Resolution filed by the Tenant be amended to remove the Tenant's son as an applicant.

The Application for Dispute Resolution filed by the Tenant raised a number of claims many of them unrelated. Rule 2.3 of the Rules of Procedure provides as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I ordered that the following claims filed by the Tenant be dismissed with leave to re-apply:

- A monetary order in the sum of \$33,088.16
- An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- An order that the landlord provide services or facilities required by law.
- An order that the Tenant is entitled to an order for the reduction of rent.

I made this order for the following reasons:

- I determined the priority issue was whether the tenant was entitled to an order cancelling the 10 day Notice to End Tenancy and whether the landlord was entitled to an Order of Possession based on non payment of rent.. The tenant submits he is entitled to deduct money from the rent as the landlord raised the rent on a number of occasions but failed to provide a Notice of Rent Increase in the approved form as required by the Residential Tenancy Act. The landlord's application is for a monetary order and an Order of Possession based on the tenant's failure to pay the rent which is directly related to whether the Tenant can deduct these sums.
- The other claims raised by the Tenant are not related.
- Both parties filed a large number of documents. The documents are not sufficiently organized for an orderly presentation of the evidence and it will take a considerable length of time to hear the claims. The parties are encouraged that if they re-apply, they should each file one document with the pages numbered in the same way they are served on the other side.
- I expected that the hearing would be lengthy and it would not be possible to hear all of the claims in the allotted time.

The original Application for Dispute Resolution filed by the landlord claimed an Order of Possession and a monetary order for non-payment of rent for month of May 2018 in the sum of \$1340.. The landlord subsequently filed a letter that purported to increase the claim for over \$13,000 raising a number of other claims. The landlord failed to formally amend his Application for Dispute Resolution as he is required to do. I determined it was not appropriate to hear those additional claims as they have not been included in an Application for Dispute Resolution.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated May 4, 2018?
- b. Whether the tenant is entitled to an order for a reduction of rent?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in 2007. There does not appear to be a written tenancy agreement between the parties at that time. However, the tenant produced a receipt dated November 2, 2007 that states "Received \$1000 for rent of upper suite aton behalf of DC (owner), heat and hydro inclu." The landlord stated the rent was initially \$1200. I prefer the tenant's evidence on this point and I determined the tenancy commenced in late 2007 with the rent set at \$1000 per month payable in advance with the heat and hydro included.

The Tenant produced a second receipt indicating the rent was raised to \$1100 (including utilities) per month payable in advance starting January 1, 2008

The Tenant produced a third receipt dated November 1, 2010 that provides that the rent was increased to \$1200 per month. The quality of the document is very poor but it appears that it states utilities are included.

The tenant produced another receipt dated June 2015 that states the rent for the rental unit was \$1425. It also indicates the tenant agreed to rent a bachelor unit in the rental property for an additional \$350 per month.

The tenant testified he paid additional rent increases between November 1, 2010 and June 2015 but he did not have a receipts and he could not provide an accounting of when he started paying the additional amounts.

The landlord failed to provide a Notice of Rent Increase in the approved form for all of the above rent increases.

The landlord produced a document that was titled Rent Contract Application dated June 1, 2015 that indicates the parties agreed that the tenant was renting the Main Floor, Basement Bachelor Suite and Garage for \$1715 per month. It provides that utilities are included. This is a 2 page document and is the closest document to a tenancy agreement the parties have. It was signed by both parties. The tenant testified he may have signed this document but does not recollect. He acted as an agent for the landlord and he signed a number of these documents on behalf of the landlord when renting to other tenants.

The parties agree that the rent was reduced to \$1640 by agreement after a tenant who had rented the downstairs suite moved out thus reducing the utilities costs.

The tenant paid \$285 for May 2018 leaving a balance of \$1355. The tenant withheld the rent for June 2018 (\$1640) and July 2018 (\$1640). The total rent withheld amounts to \$4635

The Law:

Section 41 to 43 Of the Residential Tenancy Act provides as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Analysis:

The landlord submits that he has not demanded nor received a rent increase as the sums received were to cover increases in utilities costs. He submits it was not necessary to give a Notice of Rent Increase.

I do not accept this submission for the following reasons:

- a. The original receipt provided to the tenant and other receipts provide that rent is included with the rent.
- b. The landlord is operating a business and has an obligation under the Act to provide a written tenancy agreement. If the landlord wished to increase the utilities in accordance with additional costs it was incumbent on the landlord to separate the rent and the utilities and to provide the tenant is responsible to pay the utilities (or a portion thereof) and to provide an accounting on a regular basis.
- c. The landlord failed to separate the rent and utilities.
- d. The landlord failed to provide sufficient evidence to prove the additional sums collected was to cover utility increases.

As a result I determined the landlord increased the rent contrary to the Act from January 1, 2008 to June 2015. I determined the amount of the illegal rent increase is calculated as follows:

- The tenant paid an additional sum not permitted by the Act of \$100 per month from January 1, 2008 to November 1, 2010 of \$2200 ($\$100 \times 22 \text{ months} = \2200).
- The Tenant paid an additional \$200 per month not permitted by the Act from November 1, 2010 to June 1, 2015 of 55 months particulars of which are as follows:
 - 2 months in 2010 (November and December 2010)
 - 48 months (12 months for 2011, 2012, 2013, 2014)
 - 5 months in 2015 (January, February, March, April and May 2015).
- I determined the additional sum paid not permitted by the Act for the above period was $\$200 \text{ per month} \times 55 \text{ months} = \$11,000$.
- The tenant testified he paid additional rent increases but he was not able to provide evidence of the increase and did not provide an accounting. I determined the tenant failed to prove these additional rent increases he alleged.

- I determined the tenant paid \$13,200 in a rent increase not permitted by the Act. Section 43(5) provides that the tenant can deduct this sum from rent or otherwise recover the increase.

I determined the parties agreed in writing to rent the rental unit, a bachelor suite and garage commencing June 1, 2015 for \$1715 per month. This agreement is permitted by Act as it was agreed to in writing and includes additional space. This is binding on the parties. It was subsequently reduced to \$1640 by agreement between the parties. The present rent is \$1640 per month.

The tenant withheld \$1355 for May 2018, \$1640 for June 2018 and \$1640 for July 2018 as he is entitled to do under section 43(5) of the Act for a total of \$4635.

I determined that the Tenant has established a claim against the landlord in the sum of \$8565 (\$13,200 - \$4635 = \$8565 such sum may be deducted from future rent. I ordered that the landlord pay to the Tenant the sum of \$8565.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

I ordered that the 10 day Notice to End Tenancy dated May 4, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Landlord's Application:

For the reasons set out above I dismissed the landlord's application for an Order of Possession. I also dismissed the landlord's application for a monetary order for the rent for May 2018 as the Tenant was entitled to deduct this sum and the application to retain the security deposit. I dismissed the landlord's application to recover the cost of the filing fee as the landlord has not been successful.

Conclusion:

I determined the landlord had collected rent not permitted by the Act and that the tenant is entitled to recover the overpayment. After setting off the amount already deducted from the rent I ordered that the landlord pay to the Tenant the sum of \$8565 such sum may be deducted from future rent.. I ordered that the 10 day Notice to End Tenancy be cancelled. I dismissed the landlord's application for an Order of Possession, a monetary order for non payment of rent, an order to retain the security deposit and the cost of the filing fee.

This decision is final and binding on the parties.

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: July 15, 2018

Residential Tenancy Branch