



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERINGHAM CONSTRUCTION & MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNRLS MNDCLS FFL DRI CNR OLC

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord named both tenants and applied for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- recovery of the filing fee from the tenant pursuant to section 72.

The tenant EV (the “tenant”) applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order regarding a disputed additional rent increase pursuant to section 43.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent LT (the “landlord”). The tenant represented herself with the assistance of her worker.

As both parties were present service of documents was confirmed. The tenant testified that they received the landlord’s 10 Day Notice dated June 4, 2018, the landlord’s application for dispute resolution and evidence. The landlord confirmed receipt of the tenant’s application for dispute resolution dated June 7, 2018 and evidentiary materials.

Based on the undisputed evidence I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord be authorized to increase the rent as submitted?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in August, 2016. A copy of the tenancy agreement was submitted into written evidence. The agreement provides that the initial monthly rent was \$1,450.00 payable on the 1st of each month. The agreement also includes a clause that late rent payments are subject to a \$25.00 late fee.

The landlord submits that a Notice of Rent Increase dated April 20, 2017 was mailed out to the tenant on or about that date. The Notice provides that the monthly rent would increase by \$53.00 to \$1,503.00 payable starting August 1, 2017. The landlord testified that they have no personal knowledge of when it was mailed but believes that it must have been issued as a copy was found in the corporate landlord's files.

The tenant disputes that they were ever served with the Notice of Rent Increase of April, 2017. The tenant testified that they continued to pay rent in the amount of \$1,450.00 which was accepted by the landlord. The landlord said that their duties were simply to collect the rent. The landlord said that they did not want to engage in constant arguments with the tenant and they chose to "take whatever it is was paid". The landlord said that the underpayment was reported to their corporate superiors. The landlord submits that the current arrears for this tenancy is \$958.00 which includes the unpaid rent as well as late fees charged. The 10 Day Notice issued to the tenant on June 4, 2018 provides that the arrears is \$958.00.

The tenant testified that they were never provided a copy of the Notice of Rent Increase of April, 2017 and continued to pay rent in the amount of \$1,450.00. The tenant said they were issued a Notice of Rent Increase dated April 18, 2018 which raised the rent

from \$1,503.00 by \$57.00 to \$1,560.00. As the tenant had been paying rent in the amount of \$1,450.00 she did not understand how the rent increase was calculated. The tenant said that they were later provided with a copy of the Notice of Rent Increase of April, 2017 by the landlord but until that time were unaware that they were obligated to pay anything more than \$1,450.00 monthly.

The parties gave evidence that the tenant paid rent for July, 2018 in the amount of \$1,503.00. The tenant said that this payment was not acknowledgement that there was a higher rent established in April, 2017. The landlord said that the payment did not reinstate the tenancy and the receipt issued for the payment indicates that it is accepted for use and occupancy only.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$958.00 at the time the 10 Day Notice was issued. The tenant disputes that there is a rental arrear and said that the full amount of rent has been paid each month.

The central submission by the tenant is that they were not served with the Notice of Rent Increase of April 20, 2017. The landlord submits that while they did not personally serve the Notice on the tenant they believe that it must have been done by someone employed by the corporate landlord, as a copy of the Notice was found in their records.

Taken in its totality I do not find there to be sufficient evidence to support the landlord's submissions. The simple presence of a copy of the Notice of Rent Increase in the landlord's files does not imply that the Notice was issued in accordance with the *Act*. The landlord testified that they did not serve the tenant with the Notice, nor do they have knowledge of who may have done so on behalf of the corporate landlord. The landlord was clear and consistent in their evidence that their duties simply involve collecting the rent as directed by their superiors. They said they have no first-hand knowledge of how the monthly rent is set nor how a tenant is informed of a rent increase. The landlord testified that they expect a Notice of Rent Increase to be sent by mail but was unable to provide any direct evidence that this was done.

The landlord suggested that the Notice of Rent Increase may have been received by a previous co-tenant but I find there is little evidence in support of this hypothesis. I find it equally likely that someone employed by the corporate landlord failed to mail out the Notice of Rent Increase. Furthermore, I find the landlord's continued acceptance of the rent at the amount of \$1,450.00 for close to a year before issuing a Notice to End Tenancy for Unpaid Rent or making demand for the shortfall to be instructive. If the landlord believed that the tenant was not paying the full amount owing it is reasonable to expect that they would have re-issued the Notice of Rent Increase or taken some steps to inform the tenant of the new monthly rent amount. The landlord testified that they had some discussions but ultimately chose to "take whatever it is was paid" as they did not want to spend time and energy pursuing the issue.

I find, on a balance of probabilities, that there is insufficient evidence that the landlord served the tenant with the Notice of Rent Increase of April 20, 2017 raising the rent to \$1,503.00. Therefore, I find that the monthly rent for this tenancy is \$1,450.00 as established in the original tenancy agreement.

I find that the rental arrears which the landlord submits is owing is not an amount which the tenant is obligated to pay as it arises from a rent increase which was not served in accordance with the *Act*. I find that the landlord has not established the evidentiary basis in order for the 10 Day Notice to be upheld. The 10 Day Notice of June 4, 2018 is cancelled and of no further force or effect.

As I find that the landlord has not increased the monthly rent in accordance with the *Act*, the landlord is not entitled to a monetary award for the rental arrears and late payment. I dismiss this portion of the landlord's claim.

As I find that the landlord failed to raise the rent from the initial \$1,450.00 amount in accordance with the *Act*, the landlord may not further raise the rent by calculating an increase from \$1,503.00. Therefore, I find that the Notice of Rent Increase of April 18, 2018 is of no force or effect. The monthly rent for this tenancy remains \$1,450.00 until raised in accordance with the *Act*.

Conclusion

The 10 Day Notice of June 4, 2018 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlord's application is dismissed without leave to reapply.

The tenant's application to dispute the rent increase is granted. The Notice of Rent Increase of April 18, 2018 is of no force or effect. The monthly rent for this tenancy is \$1,450.00 until raised in accordance with the Act.

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 27, 2018

Residential Tenancy Branch