



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNC, DRI, FFT, MNDCT, RR

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated December 1, 2018
- b. An order to cancel the one month Notice to End Tenancy dated November 2, 2018
- c. An order for reimbursement of rent increase paid that was not permitted by the Residential Tenancy Act.
- d. An order for a monetary order
- e. An order to reduce the rent for repairs, services or facilities agreed upon but not provided
- f. 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.

I find that the one month Notice to End Tenancy was personally served on the Tenant on November 2, 2018. I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 1, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing and the first Amendment was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order to cancel a 10 day Notice to End Tenancy dated December 1, 2018

- b. Whether the Tenant is entitled to an order to cancel the one month Notice to End Tenancy dated November 2, 2018
- c. Whether the Tenant is entitled to an order for reimbursement of rent increase paid that was not permitted by the Residential Tenancy Act.
- d. Whether the Tenant is entitled to an order for a monetary order
- e. Whether the Tenant is entitled to an order to reduce the rent for repairs, services or facilities agreed upon but not provided
- f. Whether the Tenant is entitled to an order to recover the cost of the filing fee.

Background and Evidence:

The tenancy began on November 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$650 at the start of the tenancy.

The landlord testified the tenant paid rent of \$1300 per month for about 2 years. It was then increased to \$1350, \$1375, \$1430 and then \$1500 by agreement with the tenant. The parties did not have a written agreement for the rent increases. The landlord failed to use a Notice of Rent Increase in the approved form.

The Tenant testified the landlord's timeline is incorrect. He testified he paid \$1300 until about June of 2017. At that time the landlord demanded and he paid an additional \$150. The landlord threatened he would be selling the rental unit if the Tenant failed to pay the increase. In June of 2018 the tenant offered to pay the landlord an additional \$50 to pay for the electrical cost of an air conditioner.

Tenant Application for an Order reimbursing her a rent increase not permitted by the Act:

Section 41 to 44 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 evidence presented by the both parties as to the timing of the rent increases is not satisfactory. However, I accepted the evidence of the tenant as opposed to the landlord. The tenant's evidence is more advantageous to the landlord as it would result in an order of reimbursement of a lesser amount than if I accepted the landlord's testimony.

Section 45(5) provides the tenant is entitled to recover a rent increase that does not comply with the Act. The landlord failed to give the Tenant a Notice of Rent Increase in the approved form. The parties did not agree in writing as to a rent increase. I determined the Tenant is entitled to recover \$150 per month for 18 months for a total of \$2700. I dismissed the tenant's claim to recover the \$50 a month he offered to pay the landlord for the cost of the electricity to run the air conditioner.

I determined the rent is \$1300 per month payable in advance until increased in accordance with the Act.

Tenant's Application to Cancel the 10 day Notice to End Tenancy:

The landlord served a 10 day Notice to End Tenancy for non payment of rent. The landlord testified the rent is \$1500 and that the tenant only paid \$1300 for December 2018. For the reasons set out above I determined the landlord failed to comply with the Residential Tenancy Act by failing to follow the provisions of required when increasing the rent and the rent is \$1300 per month.

I determined no rent was owed when the landlord served the 10 day Notice to End Tenancy. As a result I ordered that the 10 day Notice to End Tenancy be cancelled.

Tenant's Application to Cancel the one month notice to End Tenancy

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord alleged there were an unreasonable number of occupants in the rental unit. I determined the landlord failed to provide sufficient proof. The rental unit is a 3 bedroom unit. I accept the evidence of the tenant that he, his son and his girlfriend live in the rental unit. The girlfriend retains her own residence. One bedroom is left vacant and is used to house his 3 children when they visit on weekends from time to time. I determined the landlord failed to establish sufficient grounds to end the tenancy on this basis.

The landlord testified the tenant has breached a material term of the tenancy. In particular, the tenant has a dog and the tenant has failed to pay a pet damage deposit.

The landlord has not made a demand in writing as required by this ground. Further, I determined the landlord failed to prove the agreement between the parties provided that the tenant could not have a dog or alternatively, the tenant was required to pay a pet damage deposit.

In summary I ordered that the one month Notice to End Tenancy dated November 2, 2018 be cancelled.

The tenancy shall continue with the rights and obligations of the parties remaining unchanged until ended in accordance with the Residential Tenancy Act. .

Monetary Order and Cost of Filing fee

With regard to each of the Tenant's claims I find as follows:

- a. For the reasons set out above I determined the tenant is entitled to \$2600 for overpayment of rent that was collected by the landlord contrary to the Act.
- b. I dismissed the tenant's claim for the cost of replacing the toilet. The tenant agreed to replace it and the landlord is not required to reimburse the tenant for this cost. Further the Tenant failed to provide receipts for the cost that was allegedly incurred.
- c. I dismissed the Tenant's claim for the failure of the landlord to provide internet as the tenant failed to prove his loss.
- d. I dismissed the tenant's claim for stress and bullying as the tenant failed to prove he suffered a loss.

In summary I determined the Tenant has established a claim against the landlord in the sum of \$2600 plus \$100 for the cost of the filing fee for a total of \$2700.

Conclusion:

I ordered that the 10 day Notice to End Tenancy and the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged until ended in accordance with the Act.

I ordered that the landlord pay to the Tenant the sum of \$2700.

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.

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: December 14, 2018

Residential Tenancy Branch