



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT, MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 regarding a disputed additional rent increase pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended 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.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's 10 Day Notice and evidentiary materials. The landlord confirmed receipt of the tenant's application for dispute resolution. Based on the testimonies I find that all documents were served on the respective party in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing the landlord testified that they had withdrawn the 10 Day Notice to End Tenancy dated February 16, 2018 and Notice of Rent Increase of July 30, 2018. As such, the tenant withdrew the portions of their application disputing these documents.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy has been ongoing since 2012. The current monthly rent is \$1,850.00 payable by the first of each month.

By a letter dated July 30, 2018 the landlord attempted to implement a \$75.00 rent increase commencing November 1, 2018. The notice was not in the approved form and is for an amount greater than allowed under the Act and Regulations. As the attempted rent increase was not in the prescribed format the tenant disregarded the notice and continued paying rent at the established amount. The tenant was served a 10 Day Notice for the difference between the rent paid and the amount the landlord believed the rent should be after their increase was implemented.

Both the 10 Day Notice and Notice of Rental Increase were cancelled by the landlord prior to this hearing. The tenant submits that they incurred loss of employment income having to deal with the landlord's unauthorized attempt to increase rent and their baseless Notice to End Tenancy.

Analysis

As the landlord has withdrawn the 10 Day Notice and Notice of Rental Increase, I find it unnecessary to make a finding on those documents. While there is insufficient evidence that the landlord is currently in violation of the Act, regulations or tenancy agreement, I find it appropriate to note that the landlord is in the business of accepting payment for providing housing and ought to be aware of the legislation pertaining to what rental increases are allowed. I order that the landlord comply with the pertinent legislation when issuing rental increases.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there is insufficient evidence that the tenant has experienced a financial loss as a result of the landlord's actions. While I accept that dealing with the landlord has been a drain on the time and energy of the tenant, I find that there is insufficient evidence that there has been a commensurate loss of earnings. As such I must dismiss this portion of the tenant's application.

As I find that the tenant's application has merit I find that the tenant is entitled to recover their \$100.00 filing fee for this application. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled monthly rent payment.

Conclusion

The landlord is ordered to comply with the Act and regulations when issuing rent increases.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 22, 2019

Residential Tenancy Branch