



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1770 DAVIE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR DRI OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*;
- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent S.B. attended on behalf of the corporate landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant testified the he served the landlord with the Notice of Dispute Resolution Proceeding and his evidence by Canada Post registered mail, which was confirmed received by the landlord. The landlord testified that the tenant was served with the landlord's evidence by Canada Post registered mail, which was confirmed received by the tenant. Therefore, based on the testimonies of the parties, I find the documents for this hearing were served in accordance with section 89 of the *Act*.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

Is the tenant required to pay the rent increase?

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

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details set out in the tenancy agreement, which was signed by both parties:

- This tenancy began on September 1, 2018 as a fixed-term tenancy scheduled to end on November 30, 2019.
- Monthly rent of \$700.00 is payable on the first of the month.
- The tenant was not required to pay a security deposit to the landlord.

The landlord claimed that the \$700.00 monthly rent set out in the tenant's tenancy agreement reflected a "friends and family" discount provided to the tenant contingent on his employment with the parent company of the landlord. When the tenant's employment ended on November 30, 2018 the landlord testified that they tried to negotiate with the tenant a rent increase to \$1,200.00 which the tenant rejected. The landlord then sent the tenant a Notice of Rent Increase (on an approved #RTB-7 form), dated December 28, 2018, notifying the tenant that effective April 1, 2019 the tenant's monthly rent would be increased by \$1,000.00 to reflect a market rate of \$1,700.00. A copy of the Notice of Rent Increase was submitted into evidence by the tenant.

On April 1, 2019 the tenant only agreed to continue payment of \$700.00 monthly rent. In response, the landlord served the tenant with a 10 Day Notice for unpaid rent on April 4, 2019. The tenant confirmed receiving the notice on that day and filed an Application to the dispute the notice on April 9, 2019 on the grounds that the additional amount of rent sought by the landlord constituted a rent increase not in compliance with the *Act*.

The landlord confirmed that there was no written contract or agreement setting out the nature of the "friends and family" arrangement with the tenant, and that there were no clauses in the tenancy agreement, signed by both the tenant and the landlord, that there were any conditions attached to the rent amount provided in the tenancy agreement.

The tenant testified that his understanding was that the monthly rent of \$700.00 was not contingent upon his continued employment with the parent company of the landlord and therefore he asserted that his tenancy should continue at a monthly rent of \$700.00 per the signed tenancy agreement between the parties.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy.

A tenant who receives a 10 Day Notice to End Tenancy under section 46 has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenant received the 10 Day Notice on April 4, 2019 and filed his application to dispute the notice on April 9, 2019. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

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 this matter, the tenant disputed that any amount of rent was owed and asserted that the amount of rent the landlord claimed as unpaid reflected a rent increase not in compliance with the *Act*.

Sections 42 and 43 of the *Act* set out the responsibilities of a landlord pertaining to rent increases, in part, as follows:

- 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;

...

- 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.

Residential Tenancy Regulations section 22(3) explains the allowable percentage increase, in part, as follows:

- (3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate.}$$

The percentage amount allowed for 2019 is 2.5%.

In the landlord's own words during the hearing, she confirmed that there was no written contract or agreement setting out the nature of the "friends and family" arrangement with the tenant, and that there were no clauses in the tenancy agreement, signed by both the tenant and the landlord, pertaining to any conditions attached to the \$700.00 rent amount provided in the tenancy agreement.

The tenant testified that his understanding was that the monthly rent of \$700.00 was not contingent upon his continued employment with the parent company of the landlord.

Although both parties agreed that the written tenancy agreement required only \$700.00 monthly rent, the parties provided conflicting testimony regarding a verbal "friends and family" agreement which provided the discounted rent amount of \$700.00 contingent upon continuing employment with the landlord's parent company.

While it is always difficult to reconcile conflicting versions of events, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Therefore, without any corroborating evidence to support the landlord's version of events, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has failed to establish that there was a verbal agreement between that the \$700.00 monthly rent would be increased to market rent once the tenant's contract employment with the landlord's parent company ended. As such, I find that the monthly rent of \$700.00 was established by the written tenancy agreement signed by both parties.

Further to this, I find that the tenant's rent was first payable for the rental unit on September 1, 2018. As such, the landlord's Notice of Rent Increase is invalid and of no force or effect as it is not in compliance with the requirements of section 42(1) of the *Act*.

Therefore, as I have found that the tenant has paid rent as required by the terms established in tenancy agreement, the landlord's 10 Day Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

I find that the tenant's claim for an Order for the landlord to comply with the *Act*, regulations, and/or tenancy agreement is redundant to his Application to dispute the 10 Day Notice as there is no actionable order to be made in this matter. As such, the tenant's request on this item is dismissed.

Conclusion

The tenant was successful in his application to dispute the 10 Day Notice dated April 4, 2019, therefore the notice is cancelled and of no force or effect, and the tenancy continues, until ended in accordance with the *Act*.

The Notice of Rent Increase is invalid and of no force or effect.

The tenant is entitled to recover the \$100.00 filing fee paid for this application through a one-time deduction from his monthly rent.

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 29, 2019

Residential Tenancy Branch