



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, MNDCT, RP, LRE

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlords' three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, dated March 24, 2019 ("first 10 Day Notice"), dated May 13, 2019 ("second 10 Day Notice"), dated June 5, 2019 ("third 10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 33; and
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70.

The two landlords (male and female), the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her advocate had permission to speak on her behalf at this hearing. This hearing lasted approximately 76 minutes.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the amendment and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and amendment and the tenant was duly served with the landlords' evidence. Both parties confirmed that they were ready to proceed with the hearing and they had no objections to the other party's evidence.

The tenant confirmed receipt of the landlords' three 10 Day Notices. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' three 10 Day Notices.

During the hearing, the tenant confirmed that she was not pursuing her application to restrict the landlords' right to enter the rental unit, as it was dealt with at a previous Residential Tenancy Branch ("RTB") hearing. The tenant also confirmed that she was not pursuing her application for repairs against the landlords. Accordingly, these portions of the tenant's application are dismissed without leave to reapply.

The tenant applied for a monetary order of \$242.55. She claimed that she was seeking costs for photocopying, mailing, paper, and toner, regarding hearing-related documents. I notified the tenant that the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to an order regarding a disputed additional rent increase?

Should the landlords' three 10 Day Notices be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant's evidence was extremely confusing during the hearing, as she was emotional and stated that she had a mental illness, which made her confused. The tenant's evidence changed a number of times during the hearing, even when her advocate attempted to assist her.

Both parties agreed to the following facts. This month-to-month tenancy began on March 1, 2017. A security deposit of \$725.00 was paid by the tenant but the landlords did not cash this cheque that they still have in their possession. The tenant continues to reside in the rental unit.

The landlords claimed that a written tenancy agreement was signed by both parties. The tenant said that she signed a written tenancy agreement but she does not know whether the landlords signed it. The tenant provided a copy of the tenancy agreement.

The landlords testified that monthly rent in the amount of \$1,450.00 was payable on the first day of each month, prior to April 1, 2019, as per the parties' tenancy agreement. They stated that after April 1, 2019, the rent was increased to \$1,485.00 per month. The landlords stated that the rent increase of \$35.00, effective on April 1, 2019, increased the rent from \$1,450.00 to \$1,485.00, as per the Notice of Rent Increase, dated December 22, 2018 ("NRI"). They maintained that they gave the tenant a copy of this NRI by registered mail, which the tenant confirmed she received on January 2, 2019. The landlords testified that the tenant was entitled to a discount of up to \$250.00 off from the rent, if she performed work duties paid at \$25.00 per hour, for a maximum of 10 hours.

The landlords seek an order of possession against the tenant. They claim that the tenant failed to pay rent of \$250.00 for March 2019, \$255.00 for May 2019, and \$760.00 for June 2019. They maintained that they received the unpaid amount of \$250.00 for March 2019 and the full rent of \$1,485.00 for April 2019, but they did not receive the \$255.00 for May 2019 or the \$760.00 for June 2019. The landlords claimed that the tenant failed to perform her work duties to obtain the \$250.00 discount from rent from March to June 2019.

The tenant stated that her rent was always \$1,200.00 as per the parties' written tenancy agreement. She said that she has always adequately performed her work duties to obtain the \$250.00 off from rent each month since she moved in and that she could bank hours for future months. She claimed that she tracked her hours each month until the female landlord sent her an email in September 2017, informing her that she was not required to track her hours.

The tenant said that in February 2019, the landlords told her she owed \$1,450.00 in rent but that they did not follow the default paragraph 17 of the tenancy agreement, requiring them to give notice if she defaulted on rent or other obligations. The tenant stated that the landlords did not hire another handyman to perform the tenant's work duties, as the landlords claimed, and that the landlords declared her rent at \$1,200.00 on a shelter rent form that she was required to give to the Ministry for assistance with paying rent. She said that the landlords' NRI was not effective because it increased her rent from the \$1,450.00 figure rather than the correct \$1,200.00 rent figure.

The tenant seeks to cancel the landlords' three 10 Day Notices and an order regarding the rent increase. She stated that she overpaid rent in March 2019, by paying \$1,450.00 total, which is \$250.00 above the required amount, because she was worried about her tenancy. She said that she paid \$1,485.00 in April 2019 for the same reason. She claimed that she paid \$1,230.00 for May 2019 rent, as she increased her rent to \$1,230.00 from \$1,200.00, attempting to use a 2.5% rent increase figure herself. She maintained that she paid \$725.00 for June 2019 rent, which the landlords confirmed, as she applied her previous overpayments to this rent.

Analysis

The landlords drafted the written tenancy agreement, which the tenant signed. Both parties agreed that the tenancy agreement indicates the following at clause 4, page 2, with respect to rent:

*The Tenant agrees to pay the Landlord(s) a
\$1,450 rental fee monthly according to the following payment structure:*

The Tenant will pay the Landlords \$1200/month each month via cash, cheque or email \$ transfer; the remaining \$250 monthly will be in the form of hours worked at a rate of \$25/hr in the rental unit (painting, etc.) or in the vacation rental unit upstairs...

I find that the correct monthly rent for this unit is \$1,200.00. The above clearly states that although the rent is to be \$1,450.00, the breakdown includes only \$1,200.00 for rent and the rest to be calculated for work done at \$25.00 per hour.

The RTB does not have jurisdiction over employment or work claims. The RTB only has the ability to deal with rent and tenancy claims. Therefore, the parties' agreement regarding the \$250.00 each month is an employment issue that the parties can determine outside of the RTB at the proper forum. I cannot determine whether the tenant completed a sufficient amount of work or hours as per the parties' agreement. I can only determine the rent for this rental unit which I have decided above.

Therefore, the tenant's application to dispute a rent increase is allowed. I declare that the rent for this rental unit and this tenancy is \$1,200.00 for the remainder of this tenancy until it is legally changed in accordance with the Act. If the tenant overpaid any

amount above \$1,200.00 to the landlords for July 2019 rent, the tenant is entitled to deduct any overpayment from August 2019 rent due to the landlords for this tenancy.

The tenant's application to cancel the landlords' three 10 Day Notices is allowed. Although the tenant was late in disputing the first 10 Day Notice, dated March 24, 2019, she was in time to dispute the second and third 10 Day Notices from May and June 2019. Further, I find that the landlord's first 10 Day Notice was not issued for a proper reason under section 46 of the *Act*, as no outstanding rent was due by the tenant, since the landlords did not issue a proper rent increase and the tenant did not owe \$1,450.00 in rent. I also find that the second and third 10 Day Notices were not issued for proper reasons as the landlords' NRI was based on an incorrect initial rent amount of \$1,450.00 rather than the correct rent amount of \$1,200.00.

Accordingly, the landlords' three 10 Day Notices are cancelled and of no force or effect. The landlords are not entitled to an order of possession against the tenant.

I find that the tenant is entitled to recovery for overpayment in rent of \$565.00 total, including \$250.00 for March 2019, \$285.00 for April 2019, and \$30.00 for May 2019. These are the amounts that both parties confirmed the tenant paid over the \$1,200.00 monthly rent from March to May 2019. However, the tenant has not paid the full rent owing for June 2019 of \$1,200.00, as she only paid \$725.00, leaving a balance of \$475.00. By applying \$475.00 from the tenant's overpayment of \$565.00 to the June 2019 rent, the tenant is still owed a balance of \$90.00 from the landlords. Therefore, I order the tenant to deduct \$90.00 from August 2019 rent due to the landlords for this tenancy.

Conclusion

I declare that the rent for this rental unit and this tenancy is \$1,200.00 for the remainder of this tenancy until it is legally changed in accordance with the *Act*.

If the tenant overpaid any amount above \$1,200.00 to the landlords for July 2019 rent, the tenant is entitled to deduct any overpayment from August 2019 rent due to the landlords for this tenancy or to apply for a monetary order at the RTB.

I order the tenant to deduct \$90.00 from August 2019 rent due to the landlords for this tenancy or to apply for a monetary order at the RTB.

The landlords' three 10 Day Notices, dated March 24, 2019, dated May 13, 2019, and dated June 5, 2019, are all cancelled and of no force or effect.

The remainder of the tenant's application is dismissed without leave to reapply.

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: June 29, 2019

Residential Tenancy Branch