



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDCT, OLC, RP, RR

Introduction

On June 13, 2019, the Tenants applied for a Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking monetary compensation pursuant to Section 67 of the *Act*.

The Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by registered mail to the Landlord on June 14, 2019 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

The Tenant advised that she served one package of her evidence to the Landlord “about three weeks ago” and the second package of her evidence on July 23, 2019. The Landlord confirmed that he received this evidence, that he had read it, and that he was prepared to respond to it. While the second package of evidence was served late as per Rule 3.14 of the Rules of Procedure, as the Landlord was prepared to respond to it, I have accepted all of the Tenants’ evidence and will consider it when rendering this decision.

The Landlord advised that he served his evidence to the Tenants on July 21, 2019 by registered mail and the Tenant confirmed receipt of this evidence on July 23, 2019. Based on the undisputed testimony, I am satisfied that service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants' Application with respect to the Notice and the dispute of the rent increase, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Was a rent increase implemented contrary to the *Act*?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2016 and that rent was established at \$3,500.00 per month, due on the first day of each month. The Landlord submitted into evidence a tenancy agreement confirming the details of the tenancy. A security deposit of \$1,750.00 was paid.

The Landlord advised that he made a verbal agreement with the Tenants to increase the rent to \$3,750.00 per month from September 1, 2018 to December 31, 2018 and then to \$4,000.00 per month from January 2019 onwards. He advised that he did not have the Tenants' written authorization to increase the rent nor did he use the proper Notice of Rent Increase form.

He advised that the Tenants did not pay January or February 2019 rent but they paid \$2,000.00 in March 2019, \$5,000.00 in April 2019, and \$4,000.00 in May 2019. He stated that he served the Notice to the Tenants by mailing it to them on June 8, 2019 which indicated that \$11,000.00 was outstanding on May 31, 2019. This comprised of the rent of \$4,000.00 per month outstanding from January 2019 to June 2019 less \$9,000 rent paid from January to May 2019, even though the Tenants actually paid \$11,000.00 for March, April, and May 2019. He also advised that the Tenants paid rent in the amount of \$3,750.00 for the months of September 2018 to December 2018.

The Landlord also indicated that \$850.79 was owing for utilities following a written demand for the utilities given on May 31, 2019. When questioned about the written demand, he advised that he simply emailed the utility bills to the Tenants and never served them with a written demand. The Notice indicated that the effective end date of the Notice was June 21, 2019.

The Tenant confirmed that they paid rent in the amount of \$3,750.00 for the months of September 2018 to December 2018, that that they did not pay January or February 2019 rent but she had made an "arrangement" with the Landlord for this money, and that they paid \$2,000.00 in March 2019, \$5,000.00 in April 2019, and \$4,000.00 in May 2019.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by both parties as it is essential to the matter at hand. A copy of this Notice was provided, by the Landlord only however, as he uploaded this to the Residential Tenancy Branch website after the hearing concluded.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if he complies with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenants' rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenants notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable rent increases:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the

agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

When reviewing the Tenants' claim regarding disputing a rent increase, the undisputed evidence before me is that the tenancy agreement commenced on September 1, 2016 as a fixed term tenancy for two years, with rent being established at \$3,500.00 per month. The earliest the Landlord could have imposed a rent increase is three months prior to the fixed term tenancy ending. In order to do so, the Landlord must have given the Tenants a notice of a rent increase at least 3 months before the effective end date of the fixed term tenancy and used the approved form. Based on testimony of both parties and the evidence before me, I am satisfied that the Landlord did not comply with the *Act* with respect to the timing and provision of a Notice of the Rent Increase form.

Furthermore, there was no written agreement with the Tenants regarding a rent increase. As such, I am not satisfied that the Landlord complied with the requirements of the *Act* with respect to a rent increase and consequently, I find that he implemented an illegal rent increase. Ultimately, I find that the rent of \$3,500.00 per month is owed by the Tenants since September 2018 and the Landlord has been collecting an excess amount of rent per month more than he was permitted.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on June 13, 2019, five days after it was mailed to them. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that “*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*”

The Tenants disputed the Notice on June 13, 2019 and as per my findings above, there is evidence before me that the Tenants may have had a valid reason for withholding the rent pursuant to the *Act* as the Landlord imposed an illegal increase. While there have been overpayments made by the Tenants and also missed payments by the Tenants since September 2018, it is up to the Landlord to calculate how much rent is in arrears, if anything, and indicate that amount on the Notice. However, as the Landlord was not aware that he imposed an illegal rent increase, the amount of rent outstanding on the Notice may have been incorrect. Furthermore, as he could not calculate and outline the actual amount of rent outstanding when the Notice was served, I find that it would be prejudicial to the Tenants for me to accept the validity of the Notice, as they could not have known exactly how much rent is owed, if anything. Therefore, I find that the Notice of June 8, 2019, with respect to rent owing, is cancelled and of no force and effect.

The parties were advised that the Landlord could serve a new Notice for unpaid rent if the Landlord re-calculated rent paid to date, pursuant to the *Act*, and determined that an amount of rent was still outstanding.

With respect to the unpaid utilities, Section 46 of the *Act* states that “*If a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*”

As the undisputed evidence is that the Landlord did not provide a written demand for utilities, but then served the Notice on June 8, 2019 for outstanding utilities, I am satisfied that the Landlord did not comply with the *Act*. Therefore, I find that the Notice of June 8, 2019, with respect to utilities owing is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of June 8, 2019 to be cancelled and of no force or effect. This tenancy continues until ended 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: August 6, 2019

Residential Tenancy Branch