



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE, LAT, DRI, FFT

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- An order requiring the landlord to comply with the Act, regulations, and/or tenancy agreement, pursuant to section 62;
- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement pursuant to section 67 of the Act;
- An order to restrict or suspend the landlord's right of entry, pursuant to section 70;
- An order of authorization for a lock change by the tenant, pursuant to sections 31 and 70;
- Dispute a rent increase, pursuant to section 43; and
- Recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant DW and landlords LF and SF attended. As both parties were present service of the notice of hearing and evidence (the materials) presented by the parties was confirmed. In accordance with sections 88 and 89 of the Act, I find the parties were duly served with the materials.

Preliminary Issue - Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim to cancel the Notice is sufficiently related to the dispute of rent increase to warrant that they be heard together.

The tenant's other claims rest largely on facts not germane to the question of whether there are valid grounds for ending this tenancy as set out in the Notice and the dispute of rent increase. I exercise my discretion to dismiss all of the tenant's other claims with leave to reapply.

Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

1. Is the Notice valid?
2. Is the rent increase valid?
3. Is the tenant authorized to recover the filing fee for this application from the landlords?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained to the attending parties it is their obligation to present their evidence.

Both parties agreed the monthly tenancy started on May 01, 2013. Monthly rent is \$950.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$475.00 and still holds it in trust.

Both parties also agreed the Notice was served in person on February 09, 2020.

The Notice was submitted into evidence. It indicates the tenant was in arrears of "95-1,350.00" on November 01, 2019. The Notice is dated February 08, 2020 and the

effective date is February 13, 2020. There is a one-page attachment indicating arrears of \$1,350.00, considering the rent increase of \$225.00 effective September 01, 2020.

Landlord SF affirmed the tenant verbally agreed with a rent increase of \$225.00 on August 31, 2019. This increase would be effective on September 01, 2019 and rent would be \$1,175.00. A notice of rent increase (RTB form 07) was not served.

The tenant affirmed the landlord asked her to accept a rent increase, but she did not accept it.

Both parties also agreed the tenant has made monthly rent payments of \$950.00 on the due date since August 31, 2019.

A receipt for use and occupancy for a payment of \$950.00 received on February 01, 2020 and cheques for payment of rent on November and December 2019 and January and February of 2020 were submitted into evidence.

Analysis

Section 42 of the Act states:

- 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.

The landlord affirmed the notice of rent increase was not on the approved form and issued a day before the increase allegedly took effect. A verbal agreement is not an accepted form of rent increase. Thus, I find that pursuant section 42(3) the rent increase effective September 01, 2019 is null and void. Therefore, monthly rent is \$950.00, as specified in the tenancy agreement.

Both parties also agreed the tenant has made monthly rent payments of \$950.00 on the due date. As such, I find there are no arrears and the Notice dated February 08, 2020 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

As the tenant were successful with her application, pursuant to section 72 of the Act, I authorize her to recover the \$100.00 filing fee. I order that this amount be deducted from the rent payment due on April 01, 2020.

Conclusion

I confirm the tenancy agreement is for monthly rent of \$950.00. The Notice is cancelled and the tenancy continues until ended in accordance with the Act.

Pursuant to section 72(2) of the Act, the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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 28, 2020

Residential Tenancy Branch