



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- A monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit; and
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and a witness for the Landlord (the “Witness”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. I confirmed service of these documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and copies of their documentary evidence, was personally served on the Landlord in front of a witness on March 13, 2020. In the hearing the Landlord acknowledged receipt on that date. As a result, I find that the Landlord was personally served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and copies of the Tenant's documentary evidence, in accordance with the *Act* and the Rules of Procedure, on March 13, 2020. The Landlord did not submit any evidence to the Residential Tenancy Branch (the "Branch") or serve any documentary evidence on the Tenant in relation to this hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application. At the request of the Landlord, copies of the decision and any orders issued in their favor will be mailed to them at the address listed in the Application.

Preliminary Matters

Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Matters Dismissed with Leave to Reapply

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end and rent. I find that the other claims made by

the Tenant are not sufficiently related to the 10 day Notice or rent and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- A monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a 10 Day Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began on January 30, 2015, that rent in the amount of \$800.00 is due on the first day of each month, that a security deposit in the amount of \$400.00 was due by January 31, 2015, and that water, heat, electricity, basic appliances and window coverings, free laundry, storage, and garbage collection are included in rent. During the hearing the parties agreed that these were the terms of the tenancy agreement entered into on January 29, 2015, the date the tenancy agreement was signed.

Although the parties agreed that no Notice of Rent Increase was served on the Tenant in accordance with the *Act*, the parties agreed that the Landlord began charging the Tenant \$1,000.00 for rent on January 1, 2019, and that the Tenant began paying this amount. In the hearing the Tenant stated that they did not agree to this rent increase but

paid it as they thought they did not have another option. The Landlord disagreed, stating that there was verbal agreement for the rent increase.

The Tenant stated that when they became aware that the Landlord had no authority to increase their rent without complying with the requirements of the *Act*, they calculated the amount that they had overpaid since January 1, 2019, at \$200.00 per month, and withheld rent for March 2020, due to overpaid rent. The Tenant stated that by their calculation, they overpaid rent by \$200.00 per month from January 1, 2019 – February 28, 2020, resulting in an overpayment of \$2,800.00. The Tenant stated that as a result of this overpayment, rent was not due for March 2020 as claimed by the Landlord and that rent is not due again until June 15, 2020, at which point they will owe \$400.00 for the remainder of June, as rent remains at \$800.00 a month until such time as the Landlord serves them a valid Notice of Rent Increase in compliance with the *Act*. The Tenant also stated that they have not regularly been provided with rent receipts, despite their requests that these be provided, and that there is often confusion regarding who rent is to be paid to, the Landlord or their husband.

The Landlord disagreed that rent was not due for March 2020, stating that the Tenant verbally agreed to the \$1,000.00 rent increase. The Landlord stated that the Tenant has admitted that they did not pay any rent for March 2020, and as a result, they still owe \$1,000.00 for March. The Landlord stated that the Tenant has also paid no rent for April 2020, and the Tenant agreed that rent for April has also been withheld due to the previous overpayment of rent. The Landlord provided no ledger or rent receipts, no Notices of Rent Increase, and when asked, could not provide me with details regarding the Tenant's rent payment history or rent increases with any level of clarity or certainty.

The Landlord called the Witness to provide testimony regarding the Tenant's non-payment of rent. Although the Witness acknowledged that they do not collect rent on behalf of the Landlord or otherwise act as an agent for the Landlord, and that they are not involved with any accounting functions associated with the Tenant's tenancy, they stated that they have witnessed the Tenant being "aggressive" when the Landlord attempts to collect rent, that Tenant has not paid rent, and that they were present when the 10 Day Notice was served. The witness also continually attempted to provide testimony on issues unrelated to the 10 Day Notice or the matter rent and had to be reminded numerous times to restrict their testimony to only matters related to the 10 Day Notice and the payment of rent.

The Landlord stated that when the Tenant did not pay rent for March 2020, the 10 Day Notice was served. The 10 Day Notice in the documentary evidence before me is

signed and dated March 11, 2020, has an effective date of March 21, 2020, and states that as of March 1, 2020, the Tenant owed \$1,000.00 in unpaid rent. Both parties agreed that these are the correct details of the 10 Day Notice.

Analysis

As the Tenant acknowledged personal receipt of the 10 Day Notice on March 11, 2020, I therefore find that the Tenant was served with the 10 Day Notice on this date in accordance with the *Act*.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that when a tenant disputes a notice to end tenancy, the landlord bears the burden to prove that the notice to end tenancy is valid.

The tenancy agreement in the documentary evidence before me states that rent is due on the first day of the month and the parties agreed in the hearing that this is correct. As a result, I find that the tenancy runs from the first day of the month to the last day of the month, and that rent is due on the first. Although the parties agreed that rent was \$800.00 at the start of the tenancy and that the Landlord increased the rent to \$1,000.00 a month starting January 1, 2020, they disagreed about whether this rent increase was permitted under the *Act*.

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 41 of the *Act* states that rent must not be increased except in accordance with the *Act* and sections 42 and 43 stipulate the conditions under which rent may be increased, the allowable rent increase amounts, as well as the manner in which rent increases must be served. Of particular importance to this matter are sections 42 (2) and 42 (3) which state that notices of rent increase must be in the approved form and be given at least three months before the effective date of the increase. Further to this, section 43 (5) states that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent.

The approved form for standard rent increases is the RTB-7 Notice of Rent Increase – Residential Rental Units. As the parties agreed in the hearing that no written notice of

rent increase was served, I am not satisfied that the Landlord complied with sections 42 (2) or 42 (3) of the *Act* when they increased the Tenant's rent by \$200.00 effective January 1, 2019. Further to this, the allowable standard rent increase amount for 2019 was 2.5%, and as a result, I find that even if the Landlord had served a Notice of Rent Increase in the approved form, they would only have been allowed to increase the rent by \$20.00. Based on the above, I find that the Landlord had no lawful authority to increase the Tenants rent by \$200.00 effective January 1, 2019. As a result, I find that the \$200.00 rent increase was invalid, and that the Tenant's rent remained at \$800.00 per month as set out in the tenancy agreement. I also order that the Tenant's rent remains at \$800.00 per month until such a time as rent is increased in accordance with the *Act*.

Based on the evidence and testimony before me, I am satisfied that the Tenant paid \$1,000.00 in rent each month for the period of January 1, 2019 – February 28, 2020, resulting in a \$2,800.00 overpayment, calculated at \$200.00 per month for 14 months. Pursuant to section 26 (1) and 43 (5) of the *Act*, I therefore find that the Tenant was entitled to withhold rent for March of 2020 and that the 10 Day Notice served by the Landlord was invalid. As a result, I Order that the 10 Day Notice is cancelled and of no force or effect, and that the tenancy continue under the terms of the tenancy agreement as written, until the terms are amended or the tenancy is ended, in accordance with the *Act*.

As the Tenant was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

As the parties agreed that the Tenant withheld rent for March and April of 2020, and I have found that rent is \$800.00 per month, I find that as of the date of the hearing, the Tenant still had a rent surplus with the Landlord of \$1,200.00. As a result, I Order that the Tenant is entitled to withhold \$800.00 in rent (the total amount payable under the tenancy agreement) for May of 2020, if they have not already done so, or that the Tenant is entitled to reimbursement for any rent paid for May 2020. I also Order that the Tenant is entitled to pay only \$300.00 in rent on June 1, 2020, as a result of the remaining rent overpayment and for recovery of the filing fee. The Tenant **must** resume paying \$800.00 in rent on the first day of each month beginning on July 1, 2020, unless the Tenant has a right under the *Act* or an Order from the Branch entitling them to deduct further rent or the tenancy has ended by that date.

Conclusion

The 10 Day Notice is cancelled and of no force or affect. As a result, I Order that the tenancy continue until it is ended in accordance with the *Act*.

I Order that the Tenant was entitled to withhold rent for March and April of 2020 and is entitled to either withhold \$800.00 in rent for May of 2020 or that they are entitled to reimbursement for any rent paid for May 2020 if rent for May has already been paid. The Tenant **must** resume paying rent in full on July 1, 2020, unless the Tenant has a right under the *Act* or an Order from the Branch entitling them to deduct further rent or the tenancy has ended.

I Order that rent remains at \$800.00 per month until it is increased in accordance with the *Act*.

Although I have not considered the Tenant's Application seeking an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, or to provide services or facilities required by the tenancy agreement or law, or made any findings of fact or law in relation to these matters, both the Landlord and Tenant mentioned several times during the hearing that although free laundry facilities were included in the tenancy agreement, the Tenant's access to laundry facilities has been denied or restricted for some time. In an effort to provide clarity to the parties regarding the requirements of the *Act* and in the hopes of preventing future disputes on this issue between the parties, I have provided the following general information for their review.

Section 14 of the *Act* states that a tenancy agreement cannot be amended to change a standard term of the tenancy agreement and that subject to subsection (3), all other changes to the tenancy agreement must be agreed to by both the tenant and the landlord.

Section 27 of the *Act* states that a landlord must not terminate or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. It also states that a landlord may terminate or restrict a service or facility, other than one referred to above, if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Further to this, section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, the parties should be aware that tenants are not permitted to withhold rent for the restriction of a service or facility unless the landlord agrees to the amount, preferably in writing, or there is an Order from the Branch allowing the tenant to withhold rent for this purpose.

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 7, 2020

Residential Tenancy Branch