



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property issued on September 5, 2020, to dispute a rent increase, for monetary compensation and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

In this case, both provided late evidence. I am not considering that evidence as it is not related to the original application or amended application which was filed on September 18, 2020. Further, I am not considering any evidence that relates to attempting to settle this matter as no resolution was reached. Therefore, I will only consider evidence that was related to this original application and the tenant's amended application.

Issues to be Decided

Should the notice to end tenancy be cancelled?

Is the tenant entitled to a monetary order pursuant to section 51 of the Act?

Is the tenant entitled to cancel a notice of rent increase?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2017. Rent in the amount of \$1,050.00 was payable on the first of each month. A security deposit of \$525.00 was paid by the tenant. At that time the tenant moved in with the landlord's daughter and sharing the accommodation. In July 2019, the landlord's daughter vacated, and the

tenant rented the other room and a new agreement was reached. Rent was \$1,500.00 per month.

The tenant testified that the landlord sent them a text message on September 5, 2020, indicating that they would have to start looking for a place to move. The tenant stated it was not until October 19, 2020, that they received the proper notice; however, they refused service of the notice. Filed in evidence is a text message written on September 5, 2020.

The tenant submits that they should be entitled to receive the amount of \$18,000.00 as the landlord has failed to prove that they are acting in good faith regarding ending of the tenancy.

The tenant testified that when the tenancy commenced in August 2017 rent was \$1,050.00; however, two months later the landlord stated that the utilities had gone up and requested that they pay \$200.00 towards the utilities. The tenant stated that they felt that they had no choice and they paid those utilities from October 2017 to June 2019. The tenant seeks to recover \$200.00 per month for the 22 months for the total amount of \$4,400.00.

The landlord testified that this tenancy commenced as they were friends and only because the tenant needed a place to live. The landlord stated that the tenant moved into a room and shared the accommodation with their own daughter. The landlord stated that they forgot to discuss with the tenant their portion of utilities. The landlord stated that there was a discussion and they both agreed at that time, that the tenant would pay the amount of \$200.00 for utilities. The landlord stated that this was never an issue for the past three years, and it was only when they asked the tenant to look for alternate accommodation that this claim was made. The landlord stated that this is unfair and that they have a right to rely upon this agreement and the action of the tenant.

The tenant confirmed that this arrangement started based on a friendship. The tenant confirmed at no time did they raise this issue with the landlord, it was only after they were asked to vacate.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant is disputing a text message that was received on September 5, 2020, a text message from the landlord informing the tenant of their intent is not a notice under section 49 of the Act. A tenancy can only end in accordance with section 44 of the Act. Therefore, I find it not necessary to consider this matter. The tenancy will continue until such time it is legally ended.

Further, I find the tenants claim for compensation that equals 12 months compensation pursuant to section 51 of the Act is **unfounded and is premature**. The tenant is only entitled to claim such compensation **after** the tenancy has legally ended and based on a valid Two Month Notice to End Tenancy for Landlord's Use of Property being issued. Only then if it was not used for the intended purpose within a reasonable time after the tenancy has ended, does this section of the Act apply. In this matter the tenancy has not ended.

In this case, the tenant is claiming for an illegal rent increase that commenced in October 2017 and ended on June 2019.

Although I accept the additional amount of \$200.00 for utilities was not done in writing; however, I prefer the evidence of the landlord over the tenant that this was an agreed payment for utilities, not rent, for the following reasons.

The tenant moved into the premise and lived with the landlord's daughter out of a friendship, shortly after that there was a discussion on the issue of utilities. The tenant commenced thereafter paying the amount of \$200.00 and continue to pay that amount for 22 months at no time was this issue raised. The parties then entered into a new agreement that started in July 2019, again this issue was never raised.

I find it unreasonable that the tenant never raised this issue at any time during the three-year tenancy with the landlord, and it was not until the landlord informed the tenant by text message in September 2020, that they should be looking for alternative housing that the tenant made this claim. I find the landlord had the right to rely upon the action of the tenant when they continued to pay this amount for 22 months and when they failed to raise this issue at any time prior to being asked to vacate. I find it more likely than not that the tenant is simply retaliating because the landlord requested them to vacate. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

I also note the tenant stated at the hearing that they refused a notice to end tenancy that was issued on October 19, 2020. That matter is not before me. The tenant is cautioned that they cannot refuse documents under the Act.

Conclusion

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: October 30, 2020

Residential Tenancy Branch