



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, FFT, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 10, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a rent increase;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- To recover the filing fee.

The Tenant filed an amendment on October 18, 2020 (the “Amendment”) adding a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2020 (the “Notice”).

The Tenant appeared at the hearing with R.S. who also lives at the rental unit. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the parties I would deal with the dispute of the Notice and dispute of a rent increase if this was related to the dispute of the Notice but that the remaining issues would be dismissed with leave to re-apply as they are not sufficiently related to the dispute of the Notice. I have decided the dispute of the Notice, dispute of a rent increase and request for the filing fee. The remaining issues are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that the only additional documents received were the Monetary Order Worksheet and Amendment.

R.S. testified that she served all evidence submitted on the Landlord in the same package as the hearing package. R.S. testified that the document labelled "A..._message_to_M..." submitted October 10, 2020 supports this. I have read this document which is an email. The email does not relate to service of evidence.

Pursuant to rule 3.14 of the Rules, the Tenant was required to serve all evidence submitted on the Landlord.

Pursuant to rule 3.5 of the Rules, the Tenant has the onus to prove service. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

The parties gave conflicting testimony about whether the Tenant's evidence was served on the Landlord. R.S. pointed to the email referred to above as proof of service. As stated, the email does not relate to service and does not prove service. In the absence of further evidence to support R.S.'s testimony that all evidence submitted was served on the Landlord, I am not satisfied it was. Therefore, I am not satisfied the Tenant complied with rule 3.14 of the Rules.

Rule 3.17 of the Rules states:

Evidence not provided to the other party...in accordance with the Act or Rules...3.14...may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

Given the Landlord received the Monetary Order Worksheet, it is admissible.

The only evidence submitted that the Tenant and R.S. relied on to support their position during the hearing was:

- A 2019 tenancy agreement;
- A 2020 tenancy agreement; and
- The email referred to above.

The Landlord did not take issue with admissibility of the 2020 tenancy agreement as he had also submitted this. Therefore, the 2020 tenancy agreement is admissible.

The Landlord did take issue with admissibility of the 2019 tenancy agreement and the email referred to above and submitted that these should be excluded because he was entitled to receive them and did not. R.S. submitted that this evidence should be admitted because she provided it to the Landlord.

Pursuant to rule 3.17 of the Rules, I exclude the 2019 tenancy agreement and the email referred to above. As stated, I am not satisfied these were served on the Landlord. The 2019 tenancy agreement is not signed on behalf of the Landlord and the Landlord disagreed with the accuracy of this agreement during the hearing. Therefore, I am not satisfied the 2019 tenancy agreement submitted is a document the Landlord does have or should have despite the absence of service. Nor could the Landlord confirm the contents of the email referred to above without looking through his emails, which we did not have time for. I am satisfied it would be unfair to consider the 2019 tenancy agreement and email when I am not satisfied the Landlord has seen these or could have adequately addressed them during the hearing.

Given the above, the admissible evidence from the Tenant before me is the Monetary Order Worksheet and 2020 tenancy agreement.

R.S. confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?
3. Has there been an unlawful rent increase?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

R.S. testified as follows in relation to tenancy agreements in this matter. There were two written tenancy agreements, one from 2019 and one from 2020. Rent in the 2019 tenancy agreement was \$3,500.00. Rent in the 2020 tenancy agreement was \$3,650.00.

The Landlord testified as follows in relation to tenancy agreements in this matter. There was a tenancy agreement done in 2019. It was for a fixed term and stated that the tenants had to vacate at the end of the fixed term. The parties initialled the vacate clause. The vacate clause was included because the tenants were only going to stay in the rental unit for six months and it was agreed a new tenancy agreement would be done if they stayed longer. The tenants wanted to stay after the first six month term and so a new tenancy agreement was completed.

The Landlord testified that the only changes to the tenancy between the 2019 and 2020 tenancy agreements were the rent amount and term of the tenancy. The Landlord testified that the 2019 tenancy agreement had an addendum which was the same as the addendum to the 2020 tenancy agreement.

R.S. testified that, in addition to the rent amount and term changing, the addendum changed between the 2019 and 2020 tenancy agreements. R.S. testified that there was no addendum to the 2019 tenancy agreement. R.S. also testified that she was named as a tenant on the 2019 tenancy agreement and not on the 2020 tenancy agreement. R.S. testified that she was not named on the 2020 tenancy agreement because she was away when it was signed.

Both parties agreed the security deposit increased from the 2019 tenancy agreement to the 2020 tenancy agreement and that the Tenant simply paid the additional amount for the 2020 tenancy agreement as required.

The 2020 tenancy agreement started March 01, 2020 and is for a fixed term of one year ending February 28, 2021. Rent is \$3,650.00 per month due on the first day of each month. It shows an addendum is attached. It is signed by the landlords and the Tenant. The Landlord signed it February 06, 2020, the co-landlord signed it March 01, 2020 and the Tenant signed it March 01, 2020. The addendum is one page of mostly typed terms and was signed by the Tenant March 02, 2020, by the Landlord February 06, 2020 and by the co-landlord March 1, 2020.

R.S. and the Tenant testified that the Tenant signed the 2020 tenancy agreement and addendum in March of 2020 but that these were blank when he signed them. They also testified that the Tenant was not given enough time to review the documents, was told to just sign them and was rushed through signing them. They testified that the initials by term 9 of the addendum are not the Tenant's initials. The Tenant confirmed that his position is that the addendum was blank with no terms on it when he signed it.

Neither R.S. nor the Tenant could point to evidence submitted to support their testimony about the Tenant signing a blank tenancy agreement and addendum in March of 2020.

The Landlord denied the statements of R.S. and the Tenant about the Tenant signing a blank tenancy agreement and addendum and not being given sufficient time to review these. The Landlord submitted that the Tenant's initials on term 9 of the addendum are the same as in other areas of the tenancy agreement.

The Notice states the Tenant failed to pay \$1,200.00 due on October 01, 2020. It is addressed to the Tenant and refers to the rental unit address. It is signed and dated by the Landlord. It has an effective date of October 25, 2020.

The Landlord testified that the Notice was served on the Tenant in person October 14, 2020. The Landlord submitted a Proof of Service signed by a witness confirming this.

The Tenant did not know when he received the Notice.

The Landlord advised that the \$1,200.00 noted on the Notice is rent owing for four additional occupants in the rental unit for September and October. The Landlord

confirmed he is relying on the addendum and term about additional occupants which states:

3. Only the tenants listed below are occupying the suite. Any additional occupants will be charged an extra \$150/month each. Maximum 7 total occupants allowed in the suite.

The only tenant listed in the addendum is the Tenant. The Landlord advised that he sought \$150.00 for each occupant over the seven noted in the addendum. The Landlord testified that the Tenant has not paid any of the \$1,200.00 noted on the Notice since being issued the Notice.

The Landlord confirmed the Tenant paid \$3,650.00 in rent for September and October.

R.S. agreed the Tenant paid \$3,650.00 in rent for September and October. R.S. agreed the Tenant did not pay an additional amount for additional occupants for September or October. R.S. agreed the Tenant has not paid any of the \$1,200.00 noted on the Notice since being issued the Notice. R.S. agreed there were eleven occupants in the rental unit in September and October.

R.S. advised that the Tenant is disputing the Notice because they only found out about the addendum and requirement to pay for additional occupants on October 05, 2020 which was the first time they were provided a copy of the 2020 tenancy agreement. R.S. testified that the Landlord collected rent for October on the first and that they only found out about the additional amount owing on October 05, 2020. R.S. submitted that the Tenant is not bound by the addendum.

R.S. confirmed that the dispute of the rent increase is about the rent being increased between the 2019 tenancy agreement and 2020 tenancy agreement.

The Landlord sought an Order of Possession for the end of February 2021.

Analysis

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement unless the tenant has a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the dispute is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

The Notice was issued for rent owing for additional occupants in the rental unit for September and October.

The 2020 tenancy agreement includes an addendum with term 3 outlined above stating that additional occupants will be charged \$150.00 per month each. The term also states that the maximum occupants allowed is seven.

R.S. and the Tenant submitted that the Tenant signed the 2020 tenancy agreement in March of 2020, that it was blank at the time and that they did not see the completed tenancy agreement until October 05, 2020. R.S. and the Tenant also submitted that the Tenant was not provided time to review the documents in March when he signed them. The Landlord denied these points.

I do not accept based on the evidence provided that the Tenant signed the 2020 tenancy agreement and addendum while these were blank.

I do not accept based on the evidence provided that the Tenant would sign a legally binding contract without any of the important details noted as this does not accord with common sense.

Nor does it accord with common sense that the Tenant signed the addendum when it was blank. The addendum is not a form to be completed but is a separate page of the tenancy agreement with typed terms and one handwritten term. To accept the Tenant's position would be to accept that the Landlord presented the Tenant with a blank page with nothing on it other than a signature line for the Tenant to sign and that the Tenant signed this. I do not accept based on the evidence provided that the Landlord gave the Tenant a blank page to sign or that the Tenant signed a blank page as I find this version of events illogical. I note that I do not find term 9 of the addendum relevant to the issues before me and therefore do not find any issues raised about term 9 of the addendum relevant.

I am not satisfied based on the evidence provided that the Tenant did not have time to review the 2020 tenancy agreement and addendum when he signed these in March of 2020. I note that there are changes and initials throughout the documents which indicate that the parties went over the documents in some detail. Further, the Tenant signed the documents which I accept as an indication that the Tenant reviewed the documents and agreed with them. The Tenant cannot now claim he did not review the documents without pointing to some compelling evidence to support this. The Tenant has not pointed to compelling evidence to support this.

In the circumstances, I am satisfied based on the evidence provided that the Tenant signed the 2020 tenancy agreement and addendum in March of 2020. I am satisfied based on the evidence provided that the addendum included term 3 at the time it was signed by the Tenant. I am satisfied based on the evidence provided that the Tenant reviewed the documents and agreed to them given he signed them. Therefore, I am satisfied the Tenant was aware as of March of 2020 that additional occupants would be charged \$150.00 per month each.

I do not find it relevant whether the Tenant received a copy of the 2020 tenancy agreement in March or October of 2020. I acknowledge that the Landlord was required to provide a copy of the tenancy agreement pursuant to section 13(3) of the *Act*. However, any failure by the Landlord to do so does not result in the Tenant being relieved of his obligations under the tenancy agreement.

In relation to the rent increase issue, rent increases are governed by Part 3 of the *Act*. Policy Guideline 30 addresses rent increases and fixed term tenancies and states at page four:

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

I am not satisfied the above statement applies to the situation here. This is the Tenant's Application and pursuant to rule 6.6 of the Rules, the Tenant has the onus to prove the Landlord has increased the rent above the amount allowed.

The 2019 tenancy agreement is not admissible and therefore I cannot consider it in relation to the 2020 tenancy agreement.

Further, on R.S.'s own testimony, there were two changes between the 2019 tenancy agreement and 2020 tenancy agreement, the addition of an addendum and a change in the named tenants. R.S. testified that she was named as a tenant on the 2019 tenancy agreement and not on the 2020 tenancy agreement. In the circumstances, I find the 2020 tenancy agreement was a different tenancy agreement than the 2019 tenancy agreement with different named tenants. Therefore, I am not satisfied the above statement in Policy Guideline 30 applies and am not satisfied the Landlord was prohibited from negotiating a higher rent amount with the Tenant. Given the 2020 tenancy agreement was a different tenancy agreement, the parties were at liberty to agree to whatever rent amount they wished to agree to. As stated, I am satisfied the Tenant reviewed the completed 2020 tenancy agreement and signed it and therefore agreed to the rent being \$3,650.00.

I am not satisfied Part 3 of the *Act* applies in the circumstances and am not satisfied there has been a rent increase contrary to the *Act*.

I note that the additional amount charged for additional occupants is permitted and is not a rent increase as is clear from the following sections of the *Act*:

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following...

(f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

40 In this Part, "rent increase" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv)...

Given the above, I am satisfied the Tenant was required to pay \$150.00 per month for each additional occupant of the rental unit as of March of 2020 and am satisfied the Tenant was aware of this requirement in March of 2020 when he signed the addendum.

In relation to the Notice, pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice.

The Landlord issued the Notice for \$1,200.00 for there being eleven occupants in the rental unit for September and October, four above the seven referred to in the addendum. R.S. agreed there were eleven occupants in the rental unit for September and October. Therefore, the Landlord was entitled to collect an additional \$1,200.00 for September and October pursuant to term 3 of the addendum.

I am satisfied the Tenant did not pay an additional \$1,200.00 for September and October as required by term 3 of the addendum as R.S. and the Tenant acknowledged the Tenant did not pay this additional amount, either before or after being issued the Notice.

Given the Tenant did not pay for the additional occupants as required by term 3 of the addendum, the Landlord was entitled to serve the Tenant with the Notice.

I am satisfied based on the testimony of the Landlord and Proof of Service that the Notice was served on the Tenant in person October 14, 2020. I find the Tenant was served with the Notice in accordance with section 88(a) of the *Act*.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from October 14, 2020 to pay the outstanding amount or dispute the Notice. There is no issue that the Tenant did not pay the outstanding amount. The Tenant disputed the Notice October 18, 2020, within time. However, R.S. confirmed during the hearing that the only basis for the dispute of the Notice was that the Tenant only learned of the addendum October 05, 2020. As stated above, I do not accept this. Neither R.S nor the Tenant pointed to some other authority under the *Act* to withhold rent. In the circumstances, I am not satisfied the Tenant has a valid basis to dispute the Notice. The Tenant's dispute is therefore dismissed without leave to re-apply.

Given I have dismissed the Tenant's dispute and have found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2021.

Given the Tenant was not successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2020. This Order must be served on the Tenant. If the Tenant and all occupants do not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 05, 2021

Residential Tenancy Branch