



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for compensation is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on March 30, 2018. At the outset of the tenancy the Landlord collected \$900.00

as a security deposit. Rent of \$1,800.00 was payable on the first day of each month. The Landlord increased that rent to \$1,845.00 starting September 1, 2019. The Landlord informed the Tenant of that increase by email alone and without use or provision of the approved Residential Tenancy Branch form for rental increases. As a result of this increase the Landlord collected a total of \$675.00 to and including November 1, 2020. The Tenant reduced December 2020 rent by \$675.00. The Landlord then gave the Tenant a 10-day notice to end tenancy for unpaid rent. The Notice sets out a rental shortfall of \$720.00, being the \$675.00 rental increase amount and \$45.00 for December 2020.

The Landlord argues that the Tenant was given three month's notice of the increase, that the increase was in the amount allowed and that the Tenant acknowledged the rental increase.

Analysis

Section 42(3) of the Act under Part 3 provides that a notice of a rent increase must be in the approved form. Section 43(5) of the Act under Part 3 provides that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. Section 5 of the Act provides that Landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the undisputed evidence that the Landlord gave the Tenant a rental increase by email and not on an approved form I find that the increase does not comply with the Act. As neither Party may avoid the Act, I find that any payment or acknowledgement of that increase does not make the rental increase effectively compliant with the Act. I find therefore that the rent remains at \$1,800.00 until effectively increased under the Act. Given the undisputed evidence that \$675.00 was collected without being in compliance with the Act I find that the Tenant was entitled to deduct this amount from December 2020 rent that should have only been \$1,800.00. As the Tenant paid the full rent for

December 2020 at \$1,800.00 and deducted the \$675.00 that it was allowed to deduct from the December 2020 rent, I find that no rents were left unpaid. The Notice is therefore not valid, and I find that the Tenant is entitled to the cancellation of the Notice. The Notice is therefore cancelled, and the tenancy continues.

As the Tenant has been successful with its claim to cancel the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 12, 2021

Residential Tenancy Branch