



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNL, LRE, DRI**

Introduction

This hearing was scheduled to deal with two Applications for Dispute Resolution filed by the tenant seeking cancellation of a 10 Day Notice to End Tenancy or Unpaid Rent; cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"); orders to suspend or set conditions on the landlord's right to enter the rental unit; and, dispute of a rent increase.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing I affirmed the parties and explained the hearing process of the parties. I also ordered the parties not to record the proceeding.

I determined the tenant sent her Applications for Dispute Resolution and evidence to one of the landlord's via registered mail. Two landlords appeared at the hearing and were prepared to respond to the tenant's Applications for Dispute Resolution. Accordingly, I deemed both named landlords sufficiently served pursuant to the authority afforded me under section 71 of the Act.

I heard the landlords served their evidence to the tenant's guest, MJ, I person on April 29, 2021. The tenant confirmed she received the package from MJ and I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act.

During the hearing, I confirmed with the landlords the 10 Day Notice to End Tenancy for Unpaid Rent had been nullified by payment. As such, the tenant's request for cancellation of the 10 Day Notice was moot and I did not consider it any further.

During the hearing, I noted that the tenant had requested the landlord's right to enter the rental unit be suspended until the date of the hearing. I confirmed with the tenant that this remedy was now moot as we were at the hearing. Accordingly, I found this request to be moot at the time of the hearing and I did not consider it further.

Given the above, the only two outstanding issues to resolve pertained to the Two Month Notice and the tenant's dispute of a rent increase.

During the hearing, the parties reached a mutual agreement with respect to ending the tenancy that I record their agreement by way of this decision and the Order of Possession that accompanies it.

Issue(s) to be Decided

1. What are the terms agreed upon with respect to ending the tenancy?
2. Is the tenant entitled to recover an unlawful rent increase from the landlords and if so, in what amount?

Background and Evidence

During the hearing, the parties reached a mutual agreement with respect to the ending of the tenancy that I record as follows:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") signed by the landlord on January 27, 2021 is amended to reflect an effective vacancy date of June 30, 2021.
2. The landlords shall be provided an Order of Possession with an effective date of June 30, 2021.
3. The tenant remains entitled to the benefits and compensation provisions that accompany a 2 Month Notice including, but not limited to: ending the tenancy earlier than the effective date; the right to withhold rent for the last month of tenancy; and additional compensation under section 51(2) of the Act if the landlords do not fulfill the stated purpose on the 2 Month Notice.
4. During the remainder of the tenancy, the tenant shall not invite, permit, or otherwise allow the individual referred to by initials MJ (name provided on cover page) in the rental unit or on the residential property with the exception of the dates of June 27, 28, 29 and 30, 2021 between the hours of 9:00 a.m. and 6:00 p.m. to assist the tenant with moving out. Should the individual MJ be found on

the residential property outside of these dates and times the landlord's efforts to have MJ removed from the property shall not be considered to be unreasonably restricting the tenant's right to have guests.

As for the tenant's claim for recovery of an unlawful rent increase, I was provided unopposed evidence that the former owner of the property had issued a Notice of Rent Increase to the tenant in December 2019 to increase the rent from \$1000.00 to \$1025.00 starting April 1, 2020. Since April 1, 2020 the tenant has been paying \$1025.00 per month despite the Ministerial Order prohibiting rent increases from taking effect due to the Covid-19 pandemic.

The tenant seeks to recover \$325.00 in rent overpayments from the landlords calculated as \$25.00 per month for 13 months.

The landlords submitted that they purchased the property from the former owner in November 2020 and they did not personally receive the rent increases paid from April 2020 through November 2020. The landlords stated that the former owner was very disorganized with her paperwork and the current landlords were not in receipt of the Notice of Rent Increase from the former owner. Rather, the first they saw it was when the tenant served a copy of it with her evidence. The landlords are agreeable that they are liable to reimburse the tenant the rent increases they received between December 2020 and May 2021.

The tenant stated she would give the landlords up to June 30, 2021 to satisfy the Monetary Order and the landlords requested that I record that statement in this decision.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing in regard to the ending of the tenancy and the tenant's undertaking to not permit MJ on the property during the remainder of her tenancy with the exception of certain dates and times at the end of June 2021. I make the terms agreed upon and as recorded in this decision an Order of mine to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlords with an Order of Possession effective at 1:00 p.m. on June 30, 2021.

For added clarity, section 30(1)(b) of the Act provides for a tenant's right to have guests or visitors. It states:

30 (1) A landlord must not unreasonably restrict access to residential property by

...

(b) a person permitted on the residential property by that tenant.

[My emphasis underlined]

In this case the tenant has agreed, and I have ordered the tenant, to not permit MJ on the property for the duration of her tenancy with the exception of the dates June 27 through June 30, 2021 between the hours of 9:00 a.m. and 6:00 p.m. The tenant is not permitted to rescind this agreement and the landlords are at liberty to interfere with MJ's access to the property if MJ is on the property outside of the dates and times permitted in this agreement; and, in doing so they will not be violating the tenant's rights under section 30(1)(b) of the Act.

As for the tenant's request for recovery of the rent increase, it is undisputed that the tenant has paid a rent increase of \$25.00 per month since April 1, 2020 despite the Ministerial Order prohibiting landlords from collecting a rent increase during the Covid-19 pandemic. As provided under section 43(5) of the Act, a tenant who pays an unlawful rent increase is entitled to recover the overpaid rent by withholding the overpayment from rent payable or otherwise.

In keeping with section 43(5), the tenant would be permitted to withhold \$325.00 from rent payable to the landlords to recover the rent overpayment; however, at this point in time, the tenant has already paid rent for May 2021 and the tenant does not have to pay any rent for June 2021 as compensation for the tenancy ending pursuant to a 2 Month Notice. Accordingly, I shall provide the tenant with a Monetary Order against the landlords to recover the rent overpayment of \$325.00.

With respect to the landlord's argument that they did personally receive the rent increases prior to December 2020, since tenancy agreements run with the land, it is upon the buyer and seller of a property to settle any liabilities or debts concerning the property amongst themselves. It appears to me that the current landlords chose to proceed with purchasing the property from the former owner without receiving all of the

tenancy paperwork from the former landlord and I find they must bear the consequence of assuming the risk associated with doing so. The tenant had was not involved or privy to the negotiations or exchange of documents when the property sale was negotiated and ownership changed hands. Therefore, I issue the Monetary Order against the current landlords and if the landlords chose to pursue the former landlord for the former landlord's share of the debt, they are at liberty to do so in the appropriate forum.

Conclusion

The parties reached a mutual agreement with respect to the end of the tenancy. In recognition of the mutual agreement, I provide the landlords with an Order of Possession effective at 1:00 pm on June 30, 2021 and the tenant's right to have a certain individual on the residential property for the remainder of her tenancy is restricted.

The tenant is provided a Monetary Order against the landlords in the sum of \$325.00 to recover an unlawful rent increase she paid.

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 11, 2021

Residential Tenancy Branch