



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 23, 2021. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 23, 2021 (the “March Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To dispute a rent increase that is above the amount allowed by law

The Tenant filed an amendment April 28, 2021 disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 21, 2021 (the “April Notice”).

The Tenant appeared at the hearing. The Tenant said they would call a witness during the hearing. I told the Tenant to let me know when the witness became relevant to the issues being addressed. I told the Tenant the witness should not be involved in the hearing until required. The Tenant did not state at any point during the hearing that they wished to call the witness and I did not hear from the witness. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

D.R. was originally named as a landlord on the Application. The Landlord advised that D.R. is not a landlord and therefore I have removed D.R. from the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and 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 March Notice be cancelled?
2. Should the April Notice be cancelled?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
4. Is the Tenant entitled to compensation for monetary loss or other money owed?
5. Has there been an illegal rent increase?

Background and Evidence

Photos of a written tenancy agreement were submitted as evidence. The tenancy started November 20, 2019 and was for a fixed term ending November 19, 2020. Rent is \$2,000.00 per month due on the 20th day of each month. The agreement is signed by both parties. The parties agreed the written tenancy agreement is accurate and no other written tenancy agreement has been signed between the parties.

The parties agreed rent was increased from \$2,000.00 to \$2,300.00 in December of 2020 and went back to \$2,000.00 in March of 2021.

The parties agreed the due date for rent changed from the 20th day of each month to the 1st day of each month at some point and went back to being due on the 20th day of each month at some point.

The March Notice states that the Tenant failed to pay \$1,300.00 in rent due March 20, 2021.

The Landlord testified that the March Notice was sent to the Tenant by regular mail March 23, 2021.

The Tenant testified that they received the March Notice by email March 23, 2021.

I heard from the parties about the March Notice and unpaid rent due March 20, 2021 for most of the hearing which lasted one-and-a-half hours. The testimony of both parties was unclear and confusing. The parties contradicted themselves in their own testimony. The parties disagreed with each other. The Landlord was given an opportunity to explain the rent charts in evidence and did not provide a clear explanation. The Landlord said at one point that the Notice should have stated that \$1,000.00 was outstanding rather than \$1,300.00.

The April Notice states that the Tenant failed to pay \$1,800.00 in rent due April 20, 2021.

The Landlord testified that the April Notice was sent to the Tenant by registered mail. The Landlord did not know when the April Notice was sent to the Tenant but agreed it was sent on April 21, 2021 at the earliest.

The Tenant testified that they received the April Notice April 27, 2021.

The parties agreed the Tenant paid the outstanding rent of \$1,800.00 on April 29, 2021.

In relation to the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement, the Tenant said they want six months to find a new home.

In relation to the request for compensation, the Tenant advised that this related to the rent overpayments which have now been deducted from rent and that this is no longer an issue.

In relation to the illegal rent increase issue, the Tenant and Landlord agreed that rent is currently \$2,000.00 per month due on the 20th day of each month as stated in the written tenancy agreement. The Tenant did not take further issue with an illegal rent increase.

Analysis

1. Should the March Notice be cancelled?

I accept that the March Notice was emailed to the Tenant because this is what the March Notice states. I accept that the Tenant received the March Notice March 23, 2021. The Tenant disputed the March Notice March 23, 2021, within the five day deadline set out in section 46(4) of the *Residential Tenancy Act* (the “Act”).

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the March Notice.

The Landlord failed to prove the grounds for the March Notice as I found the testimony of the Landlord unclear, confusing and contradictory. It is not clear from either the testimony of the Landlord, or the documentary evidence of the Landlord, that the March Notice is valid. In the circumstances, I cancel the March Notice as I am not satisfied it is a valid notice to end tenancy.

2. Should the April Notice be cancelled?

Section 46 of the *Act* states:

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...

I accept that the April Notice was sent to the Tenant by registered mail on April 21, 2021 at the earliest. I find the Tenant was served with the April Notice in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the April Notice April 26, 2021. I accept that the Tenant paid the outstanding rent on April 29, 2021, within the five-day deadline. I find the Tenant cancelled the April Notice pursuant to section 46(4)(a) of the *Act*.

3. *Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?*

As explained to the Tenant at the hearing, the tenancy is ongoing on a month-to-month basis. The Landlord can only end the tenancy in accordance with section 44 of the *Act*. There is no need for an order about the Tenant having six months to find a new home because the tenancy is continuing until otherwise ended in accordance with the *Act*. This request is dismissed without leave to re-apply.

4. *Is the Tenant entitled to compensation for monetary loss or other money owed?*

The Tenant stated this is no longer an issue and I consider this request withdrawn.

5. *Has there been an illegal rent increase?*

This was no longer an issue and the parties agreed rent is \$2,000.00 per month due on the 20th day of each month as stated in the written tenancy agreement. This request is dismissed without leave to re-apply.

Conclusion

The March Notice is cancelled.

The April Notice is cancelled.

There is no need for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement and therefore this request is dismissed without leave to re-apply.

The request for compensation is withdrawn.

There is no need for an order about an illegal rent increase as the parties agree rent is \$2,000.00 per month due on the 20th day of each month as stated in the written tenancy agreement. This request is dismissed without leave to re-apply.

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: July 14, 2021

Residential Tenancy Branch