



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes landlord: **OPR-DR**
Tenant: **CNR, FFT, OLC**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On April 29, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

Part 3, section 41 of the Act establishes that "a landlord must not increase rent except in accordance with this Part." On July 30, 2020, the Residential Tenancy Branch issued a COVID-19 Regulation prohibiting a landlord from issuing a Notice of Rent Increase under the Act. I find that the previous landlords raised the rent by way of signing a new tenancy agreement and that this rent increase is not in accordance with the Act or with the COVID-19 Regulation. I further find that this illegal rent increase may have an impact on the validity of the 10 Day Notice issued to the tenant. The above issues raise questions that can only be addressed through a participatory hearing."

This hearing dealt with the landlord's application and an application filed by the tenant pursuant the Act.

The landlord applied for:

- An Order of Possession for unpaid Rent by direct request, pursuant to sections 46 and 55.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

The landlord QB attended the hearing and was represented by an agent, JG. The tenant attended the hearing and was assisted by a legal advocate, IC. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and stated she had no issues with timely service of documents.

The landlord acknowledged service of the tenant's Application for Dispute Resolution however denies receiving the tenant's evidence package or amendments. The tenant's advocate advised she sent the evidence package and amendments to the landlord at the address provided on the landlord's Application for Dispute Resolution by registered mail on August 6th. That address was confirmed by the landlord's agent as being their place of business. The landlord's agent testified that they were currently out of town and therefore have not seen the evidence package however acknowledge it is possible someone else in the office accepted it. The tracking number for the mailing is provided on the cover page of this decision.

The tenant's evidence package and amendments are deemed received by the landlords on August 11, 2021, five days after it was sent by registered mail in accordance with sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Should the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Should the landlord be ordered to comply with the *Act*, Regulations or tenancy agreement?

Should the tenant's filing fee be recovered?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. The month to month tenancy began with a different landlord on June 27, 2019 with rent being set at \$700.00 per month. That same original landlord entered into a subsequent tenancy agreement with the tenant on September 30, 2020, essentially raising the tenant's rent to \$800.00 per month. [note: this is the illegal rent increase identified in the adjudicator's decision of April 29, 2021]

On March 2, 2021, the rental unit was purchased by the current landlord and the statement of adjustments between the former owner and the new owner reflected a shortfall of \$122.58, representing only \$700.00 of the expected \$800.00 rent, plus an additional \$22.58 representing one day of pro-rated rent that the purchaser didn't receive. In the landlord's agent's document dated March 28th, entitled "monetary explanation", the landlord's agent states:

"the tenant only paid \$700 for March rent, leaving a shortfall of \$100.00. When the 10 Day notice was prepared, it did not reflect the \$22.58 that was paid to the previous landlord, instead showing the outstanding amount of \$122.58. When the agent was made aware of the \$22.58 discrepancy, the tenant was advised to only pay the outstanding amount of \$100."

The landlord testified that it was in fact the previous landlord who paid the \$700.00 rent for March, not the tenant herself. A sworn statement from the previous landlord was provided as evidence.

The landlord's agent testified the remaining \$100.00 was received on March 27th. The landlord provided a copy of an e-transfer showing the \$100.00 was received on March 27th and a handwritten receipt dated the same date. Conversely, the tenant provided a copy of an e-transfer receipt showing a \$100.00 payment was successfully deposited to the landlord's account on March 25, 2021.

The landlord's agent testified that the landlord and the tenant mutually agreed that the rent would be raised to \$1000.00 per month and the tenant paid \$1,000.00 for April rent. No copy of that written agreement was provided, however a letter from the agent dated April 29th advises the tenant she overpaid by \$200.00 and that rent shall revert to \$800.00 per month. The landlord's agent drafted this letter after being advised by the

Residential Tenancy Branch that rent could only be increased once in a 12 month period.

The landlord sent another notice to end tenancy by registered mail on May 2nd stating the tenant failed to pay \$600.00 that was due on May 1st. The landlord's agent states the \$600.00 represents rent of \$800.00 minus the overpayment of \$200.00. The tenant filed to dispute the notice to end tenancy on May 9th.

On May 3rd, the landlord received \$300.00 and a further \$700 on May 29th for June rent.

On June 3rd, the landlord sent a third notice to end tenancy to the tenant stating the tenant owes \$700 in rent. During the hearing, the landlord's agent acknowledged the amount owing as of June 3rd should have stated \$300.00, being the remainder of what was owed for May. The tenant filed an amendment to dispute this notice on June 13th.

On July 2nd, the landlord sent a fourth notice to end tenancy to the tenant stating she owes \$1,500.00 in rent. The landlord's agent acknowledges the landlord received \$700.00 rent on July 9th, however the outstanding \$300.00 for May was still unpaid. The actual amount owing as of July 2nd should have said \$1,000.00 representing May arrears and July rent only. The tenant filed an amendment to dispute this notice on July 13th.

On August 3rd, the landlord sent a fifth notice to end tenancy stating the tenant owes \$2,640.00. The landlord acknowledges receiving \$700.00 rent on August 6th, and the tenant filed an amendment to dispute this notice on August 11th.

The tenant's agent gave the following submissions. On March 1st, the tenant paid an additional \$100.00 to the landlord although the rent for March was fully paid. On April 1st, the tenant paid \$1,000.00 in rent, although rent should have remained at \$700.00 per month due to the illegal rent increase. As of April 1st, the tenant had overpaid by \$400.00 (\$100.00 on March 1st and \$300.00 on April 1st). The payment of \$300.00 on May 3rd represents the remainder of the payments for May.

The tenant was unaware the landlord couldn't increase her rent by entering into a subsequent tenancy agreement and was prohibited from raising the rent during the state of emergency by the COVID-19 regulation. The tenant submits that she paid her rent within 5 days of receiving each notice to end tenancy and the landlord is not entitled to collect any arrears for outstanding rent.

Analysis

On April 29th, an adjudicator with delegated authority by the Director of the Residential Tenancy Branch found that the previous landlords raised the rent by way of signing a new tenancy agreement and that this rent increase is not in accordance with the *Act* or with the COVID-19 Regulation. The adjudicator further found that the new tenancy agreement with the increased rent represents an illegal rent increase.

I concur with the adjudicator's decision. When the previous landlord increased the rent to \$800.00 per month on September 30th, 2020, Ministerial Order 89/2020 was in effect, prohibiting rent increases. For a rent increase to comply with part 3 of the *Act*, the landlord must serve the tenant with a notice of rent increase at least 3 months before the effective date of the increase. Increasing rent by means of entering into a new tenancy agreement is an attempt to thwart the *Act* and the regulations. As the rent increase has been found to be non-compliant with the *Act* and regulations, as well as being prohibited by Ministerial Order 89/2020, the base rent for the rental unit reverts to the original amount stated on the initial tenancy agreement signed on June 27, 2019, \$700.00 per month.

The landlord's agent confirmed at the hearing that the \$700.00 rent for March was paid, albeit by the previous landlord. I accept this fact, however who pays the tenant's rent does not affect the landlord's application for an order of possession. If rent is paid to the landlord, the landlord is not entitled to end the tenancy for unpaid rent.

I find that at the time the landlord issued the first notice to end tenancy to the tenant on March 2nd, the rent of \$700.00 was already paid. I find the notice to end tenancy issued on March 2, 2021 to be of no force or effect and I cancel it.

Based on the testimony of the landlord's agent, I find as follows:

Date	Rent amount	Amount paid	Payment date	Total owing
March 1	\$700.00	\$700.00	Prior to March 1	0
March 25 or 27		\$100.00	March 25 or 27	(\$100.00)
April 1	\$700.00	\$1,000.00	April 1	(\$400.00)
May 1	\$700.00	\$300.00	May 3	0
June 1	\$700.00	\$700.00	May 29	0
July 1	\$700.00	\$700.00	July 9	0
August 1	\$700.00	\$700.00	August 6	0

The parties disagree on whether a \$100.00 payment was made on March 25 or March 27th however I find the date of payment is irrelevant since the notice to end tenancy was issued in error as rent for the month of March had already been paid.

The second notice to end tenancy, issued on May 2nd, was received by the tenant on May 5th. The tenant filed to dispute the notice on May 9th, within 5 days as required by section 46 of the *Act*. I find that the notice didn't accurately reflect the actual amount that was due as of May 2nd. Due to the fact that rent was \$700.00 per month and the tenant had overpaid on March 25th and on April 1st, the actual amount owing was \$300.00, not \$600.00 as stated on the notice to end tenancy. I find the tenant paid the remaining \$300.00 on May 3rd. I find the tenant paid the overdue rent within 5 days of receiving the second notice and I cancel it.

The third notice to end tenancy issued on June 3rd was received by the tenant on June 9th and disputed on 13th, within 5 days as required by section 46 of the *Act*. As of June 1st, the tenant had no outstanding arrears having paid June's rent on May 29th. I find the tenant was not in arrears of rent at the time the third notice was issued, and I cancel it.

The fourth notice to end tenancy was issued on July 2nd, received by the tenant on July 8th and disputed by the tenant on July 13th, within 5 days as required by section 46 of the *Act*. I find the amount owing of \$1,500.00 shown on the notice to be inaccurate since there were no arrears owing, other than rent of \$700.00 for July. The tenant paid the July rent on July 9th, the day after receiving the notice to end tenancy. I find the tenant has complied with section 46(4)(b) of the *Act* by paying the overdue rent within 5 days of receiving the notice. The July notice has no effect and I cancel it.

The fifth notice to end tenancy was issued on August 3rd, received by the tenant on August 5th and disputed on August 11th. I find the tenant paid the overdue rent in the amount of \$700.00 on August 6th, the day after receiving the notice in compliance with section 46(4)(b). I cancel the August 3rd notice and find it has no effect since the overdue rent of \$700.00 was paid within the statutory 5 days.

The tenant sought an order that the landlord comply with the *Act*, regulations or tenancy agreement in the amendment filed on June 14th. In the amendment, the tenant did not provide any details about the nature of the order sought and during the hearing, the tenant did not provide any testimony regarding this portion of her claim. As such, I dismiss this portion of the tenant's application with leave to reapply.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, I order that the tenant deduct \$100.00 from one single rent payment due to the landlord.

Conclusion

The 10 Day Notices to End Tenancy for Unpaid Rent or Utilities issued on March 2, May 2, June 3, July 2 and August 3, 2021 are cancelled and of no further force or effect.

This tenancy shall continue until it ends in accordance with the *Act* with the rights and obligations of the parties remaining intact.

This decision is final and binding and 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: August 25, 2021

Residential Tenancy Branch