



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, CNR, DRI, LRE, OLC, MNDCT, FFT

Introduction

On June 6, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking more time to cancel this notice pursuant to Section 66 of the *Act*, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 29, 2021, the Tenant Amended his Application seeking a Monetary Order of compensation pursuant to Section 51 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on June 14, 2021 and the Landlord confirmed receiving this

package. Based on this undisputed evidence, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Tenant was not sure if he served his Amendment to the Landlord, and the Landlord advised that he did not receive this Amendment. As I am not satisfied that the Landlord was served the Tenant's Amendment, this claim for monetary compensation was dismissed with leave to reapply.

The Landlord advised that he did not submit any evidence for consideration on this file.

Pursuant to Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and the parties were informed that I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the notices to end tenancy and the dispute of the rent increase. The Tenant's other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to more time to have the Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- Is the Tenant entitled to have the Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenant is unsuccessful in cancelling this notice, is the Landlord entitled to an Order of Possession?

- Is the Tenant entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent cancelled?
- If the Tenant is unsuccessful in cancelling this notice, is the Landlord entitled to an Order of Possession?
- Did the Landlord implement an illegal rent increase?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2019 and ended when the Tenant gave up vacant possession of the rental unit on June 30, 2021. Rent was initially established at an amount of \$2,200.00 per month and it was due on the first day of each month. A security deposit of \$1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenant on March 4, 2021. However, the Tenant only applied to dispute this notice on June 6, 2021, and this was well beyond the 15-day timeframe allowable to dispute the notice. While the Tenant requested more time to dispute this notice on the Application, as the Tenant has already given up vacant possession of the rental unit, granting an Order of Possession on this notice would be a moot point.

With respect to the compensation requirement of this notice, the Landlord was advised that he is responsible for compensating the Tenant in the amount of one month's rent because he served this type of notice. However, as will be addressed below, the amount of rent was in dispute due to a potential, illegal rent increase, and complications over how much rent was paid due to COVID relief payments provided by the government to the Tenant. As the amount of rent was not clear, and as the Tenant's Amendment was severed, the Tenant's claim for this compensation is dismissed with leave to reapply.

The Landlord advised that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant on June 2, 2021 and the amount of rent owing on this notice was

noted as \$2,257.20. He stated that he “believes” he served the Tenant with a Notice of Rent Increase form on July 30, 2020 and that he increased the rent to \$2,257.20, but he is not sure when this was supposed to take effect. As well, he could not find this form that he allegedly served to the Tenant. He was informed that due to the COVID-19 State of Emergency, he was not permitted to raise the rent during this period. He was unsure of when he started collecting this rent increase.

The Tenant advised that the Landlord did not ever serve him with a Notice of Rent Increase form. However, he acknowledged that the Landlord requested this rent increase of \$57.20 per month and that he paid it, but he is also not sure of the exact date that he started paying this rent increase. He “believes” it was in July 2020, but his bank statement submitted as documentary evidence did not reflect this payment. As well, he indicated that he received \$300.00 supplements from the government for some months of rent, but he was not sure which months these applied to and, in conjunction with the rent increase that he paid, he was unable to calculate the actual amount of rent that was paid or owed each month.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the two notices to end tenancy, as the Tenant has already given up vacant possession of the rental unit, it is unnecessary to make a Decision on an Order of Possession as this point is moot.

Regarding the dispute of the rent increase, the consistent and undisputed evidence is that the Landlord increased the rent by \$57.20 per month sometime around July 2020. Given that the Landlord was not permitted to do so due to the State of Emergency, I am satisfied that this amounted to an illegal rent increase. However, as neither party could prove when the Landlord started collecting this illegal rent increase, I have not made any findings on the actual amount of rent that is owed by the Landlord to the Tenant. The Tenant’s claim for this compensation is dismissed with leave to reapply.

Regarding the Tenant's amended claim for one month's compensation pursuant to Section 51 of the *Act*, as his Amendment was not served, this has been dismissed with leave to reapply also.

The Tenant is at liberty to apply for these amounts of compensation in a future Application, and he should ensure that his calculations for this compensation are clearly outlined.

As the Tenant had moved out already, I find that the Tenant was not successful in a portion of this Application. However, as I am satisfied that the Landlord increased the rent illegally, I find that the Tenant is partially successful in this Application. As such, I am satisfied that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenant is provided with a Monetary Order in the amount of **\$50.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 4, 2021

Residential Tenancy Branch