



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDCT, OLC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on September 25, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 17, 2021 was personally served to the Landlord. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 13, 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on January 13, 2022 or January 14, 2022. The Landlord stated that she did not receive additional evidence from the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that she served additional evidence to the Landlord. In reaching this conclusion I was influenced by the Landlord's testimony that additional evidence was not received and by the fact the Tenant did not clearly recall the date it was served. As the Tenant submitted insufficient evidence to establish that she served additional evidence to the Landlord, the evidence she submitted to the Residential Tenancy Branch on January 13, 2022 was not accepted as evidence for these proceedings.

The Tenant was advised that she may refer to the evidence she submitted on January 13, 2022, but I would not be viewing those documents.

On January 22, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on January 23, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant promised they would not record any portion of these proceedings.

Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's first name, as that name was provided at the hearing.

Preliminary Matter #2

In her Application for Dispute Resolution dated September 17, 2021, the Tenant declares she was served with "two month notice when it is suppose to be 3 months, because they are selling the house". She submits that this reference was intended to be an application to dispute a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord and the Tenant agree that the Tenant was not served with a Two Month Notice to End Tenancy for Landlord's Use until December 31, 2021.

As the Tenant was not served with a Two Month Notice to End Tenancy for Landlord's Use until December 31, 2021, I can not conclude that the Application for Dispute Resolution she filed on September 17, 2021 served as an application to dispute the Two Month Notice to End Tenancy for Landlord's Use she received on December 31, 2021.

I could find nothing on file that suggests the Tenant amended this Application for Dispute Resolution to include an application to dispute the Two Month Notice to End Tenancy for Landlord's Use she received on December 31, 2021. I will therefore not be considering an application to dispute the Two Month Notice to End Tenancy for Landlord's Use at these proceedings.

Preliminary Matter #3

In her Application for Dispute Resolution dated September 17, 2021, the Tenant declares she has “paid double utilities” since July of 2020.

The Tenant did not submit any documents, such as a Monetary Order Worksheet or a list of utilities paid, that clearly explain how much compensation she is seeking for overpaid utilities.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant’s Application for Dispute Resolution does not provide full details of the Tenant’s claim that she has paid double the amount of utilities due. In reaching this conclusion I was heavily influenced by the fact the Application for Dispute Resolution does not provide details of the amounts that were paid for utilities and/or the amounts that were due . I therefore find that it would be difficult, if not impossible, for the Landlord to respond to this claim.

As the Tenant provides insufficient details of claim for overpayment of utilities, I dismiss this claim, with leave to reapply.

Preliminary Matter #4

At the hearing the Tenant stated that she is seeking an Order requiring the Landlord to comply with the *Act* if the Landlord, or an agent for the Landlord, wishes to enter the rental unit.

There is nothing in the Application for Dispute Resolution that causes me to conclude that the Tenant has applied for an Order requiring the Landlord to comply with the *Act* if the Landlord, or an agent for the Landlord, wishes to enter the rental unit. As such, this is not a matter that will be considered at these proceedings.

For the benefit of both parties, however, section 29 of the *Act*, is reproduced below. All landlords are legally obligated to comply with section 29 of the *Act*.

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is the Tenant entitled to a compensation for overpaying her rent?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 27, 2020; there is no written tenancy agreement; and that when the tenancy began the Tenant agreed to pay rent of \$750.00 by the first day of each month.

The Landlord and the Tenant agree that shortly after the tenancy began the Landlord told her she was required to pay rent of \$850.00 per month because her boyfriend was living with her. The parties agree that the Tenant did not agree to this monthly increase in writing.

The Tenant stated that she began paying \$850.00 in rent on July 01, 2020 and that she has paid the increased rent for each subsequent month, with the exception of December of 2021 and January of 2022. She stated no rent was paid for December of 2021 and January of 2022.

The Landlord stated that the Tenant began paying the increased rent on August 01, 2020 and that she has paid the increased rent for each subsequent month, with the exception of November and December of 2021 and January of 2022. She stated no rent was paid for November and December of 2021 and January of 2022.

The Landlord submitted a copy of a rent receipt, dated November 01, 2021. The Landlord stated that this was a rent payment for October of 2021.

The Landlord and the Tenant agree that on September 15, 2021 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the Tenant had not paid rent of \$850.00 that was due on September 01, 2021 and utilities of \$52.00, a written demand for which was provided on September 07, 2021.

The Tenant stated that her rent for September was paid on September 23, 2021 and the Landlord stated that it was paid on October 23, 2021.

The Tenant stated that her boyfriend does not live in her rental unit.

Analysis

On the basis of the undisputed evidence, I find that when this tenancy began on June 27, 2020, the monthly rent was \$750.00 and that the rent was increased to \$850.00 shortly after the tenancy began.

Section 42 of the *Residential Tenancy Act (Act)* stipulates that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.

As this tenancy began on June 27, 2020, I find that the Landlord did not have the right increase the rent by any amount until at least June 27, 2021. I therefore find that the \$100.00 rent increase the Landlord imposed shortly after the tenancy began did not comply with section 42 of the *Act*.

Section 43(1)(a) of the *Act* permits a landlord to impose a rent increase only up to the amount calculated in accordance with the Residential Tenancy Regulations. The allowable rent increase for 2021, pursuant to section 43(1)(a) of the *Act*, was 0%. I therefore find that the Landlord would not have had the right to increase the rent by \$100.00, pursuant to section 43(1)(a) of the *Act* even if the Landlord had waited until June 27, 2021 to impose the increase.

Section 43(1)(c) of the *Act* permits a landlord to impose a rent increase only up to the amount agreed to by the tenant in writing. As the parties agree that the Tenant did not agree to a \$100.00 rent increase, in writing, I find that the Landlord would not have had the right to increase the rent by \$100.00, pursuant to section 43(1)(c) of the *Act* even if the Landlord had waited until June 27, 2021 to impose the increase.

Section 40 of the *Act* stipulates that a “rent increase” does not include an increase in rent that is for one or more additional occupants and is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) of the *Act*. As there is no written tenancy agreement, I find that the Landlord did not have the right to increase the rent by \$100.00 even if the Tenant had another person living with her.

On the basis of the undisputed evidence that the Tenant paid the \$100.00 rent increase for the period between August 01, 2020 and October 31, 2021, which is an overpayment of \$1,500.00.

I find that the Tenant has submitted insufficient evidence to corroborate her testimony that she paid the \$100.00 rent increase for July of 2020 or to refute the Landlord’s testimony that the Tenant began paying the increased rent in August of 2020. As the Tenant has failed to establish that she paid \$850.00 in rent for August of 2020, I cannot conclude that she overpaid her rent for that month.

I find that the Tenant has submitted insufficient evidence to corroborate her testimony that she paid rent for November of 2021 or to refute the Landlord’s testimony that the Tenant did not pay rent for November of 2021. As the Tenant has failed to establish that she paid any rent for November of 2021, I cannot conclude that she overpaid her

rent for that month. Although the Landlord submitted a rent receipt dated November 01, 2021, I find no reason to discount the Landlord's testimony that this receipt was for rent from October.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. As this is the Tenant's Application for Dispute Resolution, she bears the burden of proving that there was an overpayment of rent on any given month.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. I therefore find that the Tenant is entitled to recover the rent overpayment she has made, in the amount of \$1,500.00.

On the basis of the undisputed evidence that the Tenant did not pay any rent for December of 2021 and January of 2022, I find that she still owes the Landlord \$1,500.00 in rent for those months. Pursuant to 62(3) of the *Act*, I Order that the rent overpayment of \$1,500.00 that is due to the Tenant be applied to the rent owed for December of 2021 and January of 2022. By virtue of this Order, both parties should understand that rent for December of 2021 and January of 2022 has been paid in full and the Tenant has been fully compensated for rent overpayments for the period between August 01, 2020 and October 31, 2020.

I note that I have not determined whether rent of \$750.00 is still due for November of 2021, as that is not an issue before me. In the event the Landlord believes that rent for that month is still due, the Landlord has the right file an Application for Dispute Resolution seeking compensation for rent from November of 2021.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. For reasons previously explained, I find that by September 01, 2021 the Tenant had overpaid her rent by \$1,300.00. I therefore find that on September 01, 2021 the Tenant had the right to withhold \$1,300.00 from any rent or utilities due to the Landlord.

Section 46(1) of the *Act* permits a landlord to 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 ten days after the date the tenant receives the notice. On the basis of the undisputed evidence I find that on September 15, 2021 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that she had not paid rent of \$850.00 that was due on September 01, 2021 and \$52.00 in utilities.

As the Tenant had the legal right to withhold more than the \$850.00 in rent and \$52.00 in utilities that the Landlord alleges was due on September 01, 2021, I find that the Landlord did not have the right to end the tenancy for unpaid rent/utilities in September of 2021. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 15, 2021.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 15, 2021 is set aside and has no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established that she overpaid her rent by \$1,500.00, which has been applied to rent of \$1,500.00 the Tenant owed for December of 2021 and January of 2022.

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: February 01, 2022

Residential Tenancy Branch