



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR-MT, DRI

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- To cancel a 10-Day Notice to End Tenancy signed November 5, 2021 (the “10-Day Notice”) pursuant to s. 46;
- More time to dispute the 10-Day Notice pursuant to s. 66;
- To dispute a rent increase pursuant to s. 43; and
- Return of her filing fee pursuant to s. 72.

S.J. appeared as Tenant. The Landlord did not attend, nor did someone attend on their behalf.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that she was not recording the hearing.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Tenant advises that she served the Notice of Dispute Resolution and her evidence on the Landlord by personally delivering to him on December 16, 2021. Based on the undisputed testimony of the Tenant, I find that the Landlord served her application materials in accordance with s. 89 of the *Act*.

Issue(s) to be Decided

- 1) Should the Tenant be given more time to dispute the 10-Day Notice?
- 2) Should the 10-Day Notice be cancelled?
- 3) Did the Landlord increase rent in contravention of the *Act*?
- 4) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant indicates that she moved into the rental unit as the roommate of the previous tenant. I was told that the previous tenant vacated the rental unit early November 2021. Shortly thereafter, the Tenant says that she signed a tenancy agreement with the Landlord, which was put into evidence by the Tenant. It is said to have been signed on November 1, 2021, though at the hearing the Tenant advised that it was signed on November 1, 2021.

The tenancy agreement states that rent is payable in the amount of \$1,300.00, though at the hearing the Tenant indicates that rent is paid in the amount of \$1,325.00. The Tenant confirmed that she paid a security deposit of \$650.00 and a pet damage deposit of \$325.00 to the Landlord.

The Tenant advised that the Landlord issued the 10-Day Notice on the same day he signed the tenancy agreement with her, which she says was on November 5, 2021. The Tenant indicates that she paid the Landlord rent in the amount of \$1325.00 shortly after receiving the 10-Day Notice, which she confirmed was on or about November 5, 2021. The Tenant further stated that she has been paying rent in the amount of \$1,325.00 per month since November 2021.

The Tenant indicates that she is disputing the rent increase on the basis that her roommate paid \$1,200.00 prior to her signing the tenancy agreement with the Landlord and that the increase in rent from the previous tenant to her is greater than the amount permitted under the *Act*.

The Tenant advised that the Landlord sold the property and that she had been told by him that the new owner would be taking possession of the residential property on April 1, 2022.

Analysis

The Tenant applies to cancel the 10-Day Notice and to dispute a rent increase.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant's testimony was that she paid her rent of \$1,325.00 on or about November 5, 2021, shortly after the receiving the 10-Day Notice from the Landlord. As the Tenant's testimony was undisputed, I find that she paid her rent within the 5-days permitted to her under s. 46(4) of the *Act*.

The practical effect of the Tenant paying her rent within the 5-day period is that the 10-Day Notice is of no effect, as set out under s. 46(4)(a). Strictly speaking, the Tenant's application to cancel the 10-Day Notice was not necessary as it was rendered ineffective immediately upon her paying rent on or about November 5, 2021. As the 10-Day Notice was of no force prior to the application being made, I need not consider the information relevant to an analysis when canceling a 10-Day Notice.

With respect to the Tenant's second claim respecting the rent increase, a landlord may increase rent but only as permitted s. 43 of the *Act*. In this case, the Tenant argues rent was increased by an amount greater than permitted under the Regulations when considering the rent paid by the previous tenant.

The Tenant's argument fails because, based on her evidence, she was the roommate of the previous tenant from July 1, 2021 until October 31, 2021. During the previous period, in which she says rent was paid in the amount of \$1,200.00, she was not a tenant under the *Act* and was a mere occupant.

The *Act* governs and modifies the contractual relationship between landlords and tenants. As stated by s. 2 of the *Act*, the act applies to tenancy agreements, which is defined as the agreement, written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. From July 1, 2021 until October 31, 2021, the Tenant was an occupant and had no direct contractual relationship with the Landlord, with the previous tenancy agreement being between the Landlord and the previous tenant.

This point is important because the parties signed a tenancy agreement in November 2021, which thus gave rise to Tenant's status as a tenant within the meaning of the *Act*. When the tenancy agreement was signed, the only restriction on what rent would be was what the parties were willing to agree to. The Landlord was under no obligation to keep rent at the previous amount of \$1,200.00, nor was the Tenant under an obligation to sign the tenancy agreement with rent that was set. Such is the nature of contractual agreements.

I would dismiss the Tenant's application for a rent increase as there was no contractual relationship between the Tenant and the Landlord when rent was paid by the previous tenant in the amount of \$1,200.00. The parties entered into the tenancy agreement in November 2021 and agreed to the new amount of rent.

I make no findings with respect to whether rent was payable in the amount of \$1,300.00 or \$1,325.00 under the tenancy agreement. The Tenant was inconsistent in her evidence, at points saying rent was \$1,300.00 and at other points saying it was \$1,325.00. Her application stated it was \$1,300.00. Given these inconsistencies in the evidence, I cannot make any determination on this point. This is not critical to my findings listed above as whatever the amount of rent that was agreed to when the tenancy agreement was signed was the amount that ought to have been paid.

Conclusion

The Tenant's application under s. 46 to cancel the 10-Day Notice was unnecessary as the notice was of no effect immediately upon her paying rent on or about November 5, 2021.

The Tenant's claim to dispute a rent increase is dismissed without leave to reapply. She had no contractual relationship with the Landlord when she was the previous tenant's roommate. She entered into a tenancy agreement with the Landlord, thus agreeing to rent set out under the agreement.

As the Tenant's first claim was unnecessary and she was unsuccessful in her second, I find that the Tenant is not entitled to the return of her filing fee. I dismiss her claim under s. 72 without leave to reapply.

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: March 24, 2022

Residential Tenancy Branch