



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR-MT, DRI, RP, PSF**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;.
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 41;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27.

Both the landlord and the tenant attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The parties agree that the tenant has paid the outstanding rent for November, 2022 and the landlord’s notice to end tenancy for unpaid rent is no longer valid. Consequently, I

find the notice to end tenancy issued on November 10, 2022 has no force or effect and I cancel it.

At the commencement of the hearing, I advised the parties that unrelated issues would be severed as they were not related to the primary issues before me. As the

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issue regarding repairs between them, turned their minds to compromise and achieved the following resolution of this aspect of the dispute.

1. The landlord agrees to attach the dangling light fixture in the tenant's bathroom.
2. The landlord agrees to install the non-functioning light that is located on the west side of the apartment building.
3. When the tenant finishes painting the baseboards supplied by the landlord, the landlord will finish the flooring in the tenant's bathroom. The baseboards will be delivered by the middle of May, 2023. The parties to agree on when the baseboards should be painted to allow for curing and drying.
4. The landlord will install the transition between the kitchen and the living room.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle this aspect of the dispute. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to this portion of the application before me.

Issue(s) to be Decided

Has the landlord raised the rent contrary to the *Act*?

Background and Evidence

The parties agree that the tenant has been living in the rental unit for at least the past 8 years. In 2021 there was a fire in the building which completely gutted another unit and caused smoke damage to the tenant's unit. The tenant moved out of his unit and stayed in a motel for approximately a year while the building was being renovated and repaired.

The landlord testified that when the repairs were done, the tenant wanted to reoccupy the unit he had before. The landlord told the tenant that the rent is now \$850.00 per month, unlike the tenant's previous rent which was \$675.00. The landlord argues that

the tenant was under no obligation to take the unit but the tenant chose to accept the terms of rental at \$850.00 per month. The parties did not sign a new tenancy agreement when the tenant moved back in.

The tenant testified that he has been paying the stated rent of \$850.00 per month since moving in after the fire. There is a low vacancy rate in his city and he took what he could because he could no longer afford to pay the motel's rates.

Analysis

I find that pursuant to section 44(1)(e), the previous tenancy ended in 2021 when the tenancy agreement was frustrated due to the fire. Residential Tenancy Branch Policy Guideline 34 states:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

As the previous tenancy ended by frustration due to the fire, I find the parties entered into a new tenancy when the damage to the building from the fire was fixed. The landlord offered the vacant unit to the tenant at \$850.00 per month and the tenant accepted the offer.

I find that the tenant had the right to choose whether or not the terms of the new tenancy agreement suited him. If the tenant believed that \$850.00 per month was too high, the tenant had the opportunity to not accept the rental and live elsewhere. I find that the difference in rent between what the tenant was paying before the fire and after the fire does not constitute an illegal rent increase as the former tenancy agreement had ended by frustration. The parties entered into a new tenancy agreement, and both accepted the terms of the agreement, including the amount of rent to be paid. The tenant's application to dispute a rent increase is therefore dismissed without leave to reapply.

At the beginning of the hearing, I dismissed with leave to reapply, parts of the tenant's application that I deemed unrelated to the primary issue before me. No testimony was heard regarding the tenant's application seeking an order that the landlord provide services or facilities. In his application, the tenant seeks an order for "*snow removal from all sidewalks, stairs, to keep everyone safe from falls*". The merits of this portion of

the tenant's application remains undetermined and the tenant is at liberty to reapply for this relief.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

The application seeking to dispute a rent increase is dismissed without leave to reapply.

The parties agreed to repairs as follows:

1. The landlord agrees to attach the dangling light fixture in the tenant's bathroom.
2. The landlord agrees to install the non-functioning light that is located on the west side of the apartment building.
3. When the tenant finishes painting the baseboards supplied by the landlord, the landlord will finish the flooring in the tenant's bathroom. The baseboards will be delivered by the middle of May, 2023. The parties to agree on when the baseboards should be painted to allow for curing and drying.
4. The landlord will install the transition between the kitchen and the living room.

The remainder of the tenant's application is dismissed with 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 31, 2023

Residential Tenancy Branch