



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 10 February 2023 [the 'Notice'].
2. Prohibition of a rent increase [the 'Rent Increase'].
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing of this application on 25 April and 1 June 2023. The tenants also appeared.

Issues to be Decided

In my interim decision of 4 May, I dealt with the issue of the Rent Increase. That leaves one issue to decide:

Does the Notice end the tenancy?

Background and Evidence

I detailed most of the background to this dispute in my interim decision. Here I will only recount what the parties told me about the Notice during the continuation of this hearing on 1 June.

The landlords told me that from December 2021 to January 2023 [the 'Period'], the tenants paid \$1,900.00 *per* month for rent. But then, come February 2023, they paid no rent at all.

As a result, the landlords drafted the Notice. In drafting this Notice, they:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 20 February 2023; and
5. stated the basis for the Notice as the Applicant's failure to pay rent in the amount of \$1,900.00 due on 1 February.

The tenants conceded that they paid no rent at all for February. They told me, however, that they decided not to pay any rent because the true amount of rent during this Period should have been only \$1,700.00 *per* month. This means that they overpaid rent during the Period by \$200.00 each month, for a total of 13 months. This, they said, entitled them to withhold a total of \$2,600.00 rent.

The tenants, therefore, did not pay any rent in February, leaving them a 'credit' of \$900.00 [\$2,600.00 overpayment minus \$1,700.00 for February rent leaves \$900.00].

In effect, therefore, the tenants argue that they have paid rent for February, and there was no basis for the landlords to issue the Notice.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

In my interim decision I resolved the dispute over the lawful amount of rent owing during the Period, and decided that the lawful amount was \$1,700.00 *per* month. Though the landlords did not, of course, have the benefit of that decision when they issued the Notice in February, the effect is that the tenants were entitled to withhold rent for February.

The landlords argued that, though I ruled that \$1,900.00 was an unlawful rent, I ought to consider that for 2022 \$1,725.00 would have been a lawful rent; and for 2023,

\$1,760.00 would be a lawful rent. The landlords say that these figures represent rent increases permitted under the *Residential Tenancy Act* [the 'Act'].

The tenants replied that for the lawful rent for 2022 and 2023 to be anything other than \$1,700.00, the landlords ought to have provided proper and timely notices of rent increases in 2022 and 2023. But the tenants say that the landlords did not provide such notices, and there was no evidence to suggest that they did.

In any event, I addressed such disputes over the lawful rent in my interim decision.

Conclusion

I grant the tenants' application and cancel the Notice. The tenancy shall continue.

The tenants lawfully withheld rent for February, and are entitled to withhold a further \$900.00 from their next rent payment due on 1 July 2023.

As they succeeded in this application, I also order that the landlords must reimburse the tenants for the cost of filing this application, in the amount of \$100.00. The tenants can add this amount to the total that they can deduct from their next rent payment.

This means that the tenants can lawfully pay only \$700.00 for July's rent [\$1,700.00 rent, minus \$1,000.00 is \$700.00].

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 22 June 2023

Residential Tenancy Branch