



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR DRI FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and evidence on file.

The tenant's application to cancel the 10 Day Notice was filed on October 15, 2018 within the time period permitted under the Act.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Was the disputed rent increase in compliance with the Act?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on over five years ago. The tenant has been paying the monthly amount of \$1476.00 since April 2015. The rent is payable on the 1st day of each month.

The 10 Day Notice to End Tenancy subject to this dispute is dated October 14, 2018 and received by the tenant on this same date. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$1524.00 which was due October 1, 2018. The tenant paid the original rent amount of \$1476.00 on October 1, 2018 less a deduction of \$107.49 for which she provided a receipt.

The landlord submits the tenant was served with a Notice of Rent Increase on February 28, 2017 which was posted to her door. The landlord submitted a sworn statement from the person who posted the Notice of Rent Increase. The landlord submits the Rent Increase was effective June 1, 2017, which he acknowledges should have actually been July 1, 2017. The landlord submits that as per this Notice, the rent was increased from \$1476.00 to \$1524.00. The landlord testified that he even e-mailed the tenant to notify her about the rent increase and also sent a couple additional e-mail reminders as well as a reminder in the beginning of June 2017 and July 2017 when the tenant failed to pay the rent increase amount. The landlord testified that he also sent various "response messages" when accepting e-transfer payments from the tenant advising her that she was not paying the correct amount. The landlord acknowledged that he did not serve the tenant with any 10 Day Notice back in 2017 as he was busy and the \$54.00 rent increase didn't bother him that much.

The landlord also argues that the \$107.49 deduction for plastic film for windows was not authorized. Again, the landlord testified that he sent the tenant a message via a response to the e-transfer from the tenant advising that the deduction was not authorized. The landlord acknowledged that the tenant made a similar deduction before winter in previous years but states that it was never authorized. The landlord submits that he does not recall if this deduction happened every year. The landlord did recall a deduction in 2017 for \$124.00. The landlord testified that the tenant would complain about the heat in the rental unit so he didn't dispute the previous deduction.

The tenant submits that she was never properly served with the February 2017 Notice of Rent Increase. The tenant acknowledged receiving an e-mail but states that she advised the landlord that she will not accept the increase by e-mail. The tenant submits an e-mail by the landlord in which he states he was not able to deliver the Notice in person so is sending it by e-mail. The tenant submits that the proof of service of the Notice being posted to the door is dated in July 2017 and is completed by a friend of the landlords. The tenant denies ever receiving a Notice in this manner. The tenant submits that she only received one e-mail from the landlord in which he stated she was not paying the correct increased amount.

The tenant testified that there is an issue with heating in the home which is why the landlord agreed she could install plastic film on the windows in the winter months and deduct the cost from the rent. The tenant testified that she has done this every year and provided one receipt from 2014 which she was permitted to deduct. The tenant testified that she has other receipts but did not get them together for this hearing. The tenant submits that the landlord acknowledged the deduction in 2017. The tenant submits that the landlord has permitted this deduction every year so the landlord should be estopped from claiming it to be unauthorized this year. The tenant submitted that she has made many deductions over the years for various expenses all of which the landlord had verbally agreed to and not taken any action on in the past.

The tenant submits that the response messages to e-transfer payments allegedly sent by the landlord do not come to her and she has no knowledge of them.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

With the matter of the alleged February 2017 Notice of Rent Increase, I find that there is insufficient evidence that this Notice was properly served and received by the tenant. I find that the evidence supports the tenant's argument that this Notice was only sent by e-mail. E-mail is not a valid method of service of documents under the Act. Further, I find that if the landlord wished to rely on the February 2017 Notice of Rent Increase he should have taken some action sooner than October 1, 2018 if the tenant was not paying the correct amount of rent. By accepting the same original rent payment for over a one year period, the landlord has effectively withdrawn any Notice even if it was properly served. The Notice of Rent Increase dated February 28, 2017 is hereby cancelled and of no force or effect.

The landlord has also served another Notice of Rent Increase dated July 1, 2018 which is to be effective November 1, 2018. This notice is based on an original rent payable amount of \$1524.00 as per the February 2017 Notice of Rent Increase. As I have

cancelled the February 2017 Notice of Rent Increase, the July 1, 2018 Notice must also be cancelled as the amount of the rent increase is based upon the previous invalid Notice.

With respect to the unauthorized deduction, I find that the evidence supports the tenant's argument that this similar deduction was permitted in each of the previous years of the tenancy. I find the landlord did not provide sufficient evidence that he communicated to the tenant that he was not permitting this deduction in 2018. There is insufficient evidence that the tenant ever received the landlord's messages sent through the e-transfer platform. Further, as the landlord based the 10 Day Notice on the full amount of rent that was payable, including the improper rent increase amount, I find the tenant would not have had any opportunity to just pay the deducted amount in order to avoid eviction. The 10 Day Notice was dated October 14, 2018 and indicated an unpaid amount of \$1524.00 although the landlord had received a payment of \$1368.51 on October 1, 2018.

Accordingly, the 10 Day Notice to End Tenancy dated October 14, 2018, is hereby cancelled and of no force or effect.

In order to avoid similar disputes in the future, I order the tenant to not make any future deductions from rent unless permitted under the Act or unless she receives prior written authorization from the landlord.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy, dated October 14, 2018, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The Notices of Rent Increase dated February 28, 2017 and July 1, 2018 are also cancelled and of no force or effect.

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: November 26, 2018

Residential Tenancy Branch