



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As Tenant RF (the tenant) confirmed that they were handed the 2 Month Notice by the landlord on August 30, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. A previous handwritten 2 Month Notice of May 1, 2019 had no legal effect as it was not on the approved Residential Tenancy Branch (RTB) form. As the landlord confirmed that they had received a copy of the tenants' dispute resolution hearing package and written evidence sent by registered mail on September 13, 2019, I find that the landlord was duly served with these materials in accordance with sections 88 and 89 of the *Act*. The landlord did not provide any written evidence for this hearing.

At the commencement of the hearing, the parties confirmed that the tenants vacated the rental unit on October 31, 2019, and that the landlord now has possession of the rental unit. For this reason, the tenant withdrew their application to cancel the landlord's 2 Month Notice. The tenants' application is hereby withdrawn.

Issues(s) to be Decided

Are the tenants entitled to a retroactive reduction in rent arising out of the landlord's alleged illegal rent increases charged to the tenants during this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on or about January 1, 2009. The parties did not sign a Residential Tenancy Agreement. The tenant gave undisputed sworn testimony that the original monthly rent was set at \$1,000.00, payable in advance on the first of each month. By early 2018, the monthly rent had increased to \$1,300.00. The landlord increased the monthly rent to \$1,400.00 on March 1, 2018, and to \$1,550.00 on April 1, 2019. Both parties agreed that the landlord did not issue any Notices of Rent Increase for any of the rental increases during this tenancy on approved Residential Tenancy Branch forms.

Although the tenants did not provide a Monetary Order Worksheet or identify a monetary amount they were seeking, they did provide written evidence seeking a retroactive rent reduction for rental increases they considered charged illegally by the landlord. The tenant said that they did not become aware of the extent to which they had been overcharged by the landlord until they sought the advice of a lawyer after receiving the landlord's request to end their tenancy.

At the hearing, the tenant provided a breakdown of how they arrived at an amount of \$1,566.00 they believed they were overcharged during this tenancy. The tenant also sought recovery of their \$100.00 filing fee for this application.

Analysis

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. The tenant confirmed that they had authority to represent each of the other tenants in this matter. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The tenant withdrew their application to cancel the landlord's 2 Month Notice.
2. Both parties agreed that this tenancy ended on October 31, 2019, by which time the tenants had moved out of the rental unit and further agreed that the tenancy

ended on the basis of the 2 Month Notice issued by the landlord on August 30, 2019.

3. The landlord agreed to send the tenants a negotiable cheque in the amount of \$1,666.00 by mail on November 14, 2019.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue monetary Order in the tenants' favour in the amount of \$1,666.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible after any failure to abide by the terms of this portion of their agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also order that the tenants' application to cancel the landlord's 2 Month Notice is withdrawn, as this tenancy has already ended in accordance with the 2 Month Notice issued to the tenants.

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 14, 2019

Residential Tenancy Branch