



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT, MT, PSF, OLC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 3, 2019.
- b. An order for more time to make this application
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order that the landlord provide services or facilities required by the tenancy agreement or by law.
- e. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 9:30 a.m. on December 5, 2019. The Tenants were present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the one Notice to End Tenancy dated August 3, 2019 was personally served on the Tenants on September 14, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on October 7, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated August 3, 2019 which was served on the tenants on September 14, 2019?
- b. Whether the tenants are entitled to more time to make this application?
- c. Whether the tenants are entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?
- d. Whether the tenants are entitled to an order that the landlord provide services required by the tenancy agreement or law?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on December 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$745 per month payable in advance on the first day of each month. The rent has since been increased to \$875 per month. The tenant(s) paid a security deposit of half of a month rent at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy dated August 3, 2019 did not include the second page and did not identify any grounds.

Analysis:

I determined that it was appropriate to grant the tenants more time to make this application. The locks were changed and they filed an application for a tenant's Order of Possession to be heard by expedited hearing. That matter was resolved. The Branch then advised that it was necessary to file an application to cancel the one month Notice to End Tenancy which they did as soon as they were advised.

After carefully considering all of the evidence I determined the landlord failed to establish sufficient grounds to end the tenancy for the following reasons:

- The Notice to End Tenancy does not identify any grounds.
- The landlord failed to attend the hearing and failed to provide evidence to establish sufficient cause to end the tenancy.

As a result I ordered that the Notice to End Tenancy dated August 3, 2019 and served on the tenants on September 14, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

As the tenants have been successful with this application I ordered that the landlord pay to the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

The tenants testified that landlord has demanded rent increases and they have paid them without following the requirements of the Residential Tenancy Act. I ordered that should the landlord increase the rent in the future that the landlord comply with the provisions of the Residential Tenancy Act dealing with rent increases which is set out below.

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements: additional occupants].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenants also sought an order that the landlord provide services or facilities required by the tenancy agreement or law. The Application identifies a request that the landlord restore access to the washing machine. They have since purchased their own washing machine and that is no longer an issue. At the hearing the tenant raised other matters that were not set out in the Application for Dispute Resolution. I advised the tenants that I could only consider those matters set out in the application. The tenants stated that they wished to withdraw this claim.

Conclusion:

I ordered that the Notice to End Tenancy dated August 3, 2019 be cancelled. I further ordered that the landlord comply with the Act should the landlord decide to serve a

Notice of Rent Increase. Finally I ordered that the landlord shall reimburse the Tenants with the cost of the filing fee such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: December 05, 2019

Residential Tenancy Branch