



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, OLC, LRE, MNDCT

Introduction

This hearing was convened in response to two applications by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling three notices to end tenancy - Sections 46 and 47;
2. An Order in relation to a disputed rent increase - Section 43;
3. An Order for the Landlord’s compliance - Section 62;
4. An Order restricting the Landlord’s entry - Section 70; and
5. A Monetary Order for compensation - Section 67.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant’s application claims an order for the Landlord’s compliance and a restriction on the Landlord’s entry based on Landlord breaches. The Tenants claim for compensation is in relation to return of overpaid rent on a disputed rent increase and return of the security deposit.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. The notices to end tenancy are related to rents and include late rent payments. The primary matter is whether or not the tenancy ends based on the notices to end tenancy. As the claims for compliance and entry are

not related to this matter, I dismiss these claims with leave to reapply. As a portion of the compensation claim is in relation to overpaid rents, I dismiss the remaining compensation claims with leave to reapply.

Issue(s) to be Decided

Are the notices to end tenancy valid?

Is the rent term valid?

Is the Tenant entitled to return of any rents?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement with a different landlord started on September 1, 2019. Rent of \$600.00 was payable on the first day of each month. At the outset of the tenancy the Tenant paid a security deposit of \$300.00. In January 2021 the Landlord purchased the building containing the rental unit and the Parties subsequently signed a second tenancy agreement that increased the rent to \$700.00 as of March 1, 2021. On March 1, 2021 the Tenant only paid rent of \$600.00 and on March 27, 2021 the Landlord served the Tenant with a 10-day notice for unpaid rent (the "March Notice") setting out unpaid rent of \$100.00. The Tenant paid the \$100.00 on March 27, 2021. On April 1, 2021 the Tenant paid no rent and on April 2, 2021 the Landlord served the Tenant with another 10-day notice to end tenancy for unpaid rent (the "April Notice") setting out unpaid rent of \$700.00. The April Notice was posted on the Tenant's door on April 2, 2021.

The Tenant states that they were coerced into signing the new tenancy agreement with the rental increase. The Tenant states that the Landlord was informed that the Landlord could not increase the rent without three months' notice and within the allowable amount however the Landlord told the Tenant that if the Tenant did not sign the agreement the Tenant would have to find another rental unit. The Tenant states that the Landlord also told the Tenant that the rent increase was needed due to higher insurance and maintenance costs. The Landlord states that the intention was to evict

all the tenants for renovations however the Landlord asked for a rent increase instead and that the Tenant was not coerced in any way to sign the new tenancy agreement with the increased rent.

The Tenant states that it paid the April 2021 rent of \$700.00 on April 12, 2021. The Landlord states that it received the Tenant's rent by e-transfer on April 15, 2021. The Landlord confirms that it did not issue a receipt for this amount indicating that the rent was received for "use and occupancy only". The Tenant states that after paying the April 2021 rent the Tenant believed that the tenancy would continue as the Tenant heard nothing further from the Landlord. The Landlord states that the rent increase to \$700.00 was revoked and that from May 1, 2021 forward the Tenant's rent has been \$600.00. The Landlord agrees to return \$200.00 to the Tenant for March and April 2021.

The Landlord states that on March 27, 2021 the Landlord served the Tenant with a one-month notice to end tenancy for cause (the "Cause Notice"). The Parties confirm that the reasons set out on the Cause Notice are:

- Repeated late payment of rent; and
- Breach of a material term.

The Landlord states that the Tenant paid rent late for February and March 2021.

The Landlord states that the Tenant breached a material term of the tenancy in relation to smoking. The Landlord states that the term is set out under the rent payable terms of the tenancy agreement and states as further information that there is "No smoking in the building". The Landlord states that this term was starred to set out its importance and that the Parties discussed this requirement at signing. The Landlord confirms that there is no mention in the written tenancy agreement that the smoking term is a material term and that at signing the Tenant was not told that the smoking term was vital to the tenancy and that if breached the tenancy would end. The Landlord states that the

Tenant was just told that the building was non-smoking. The Landlord states that although there is no witness evidence of the Tenant smoking in the unit, when the Landlord conducted an inspection of the unit the Landlord found the unit to have a strong smoke smell and a cigarette butt was found on the coffee table. The Landlord states that the Tenant also smokes outside of the unit in a common area just outside the door of the unit. The Landlord states that it gave the Tenant a letter dated February 1, 2021 about the breach of the non-smoking term. The Landlord confirms that the letter makes no mention of the non-smoking term being a material term of the tenancy.

Analysis

Section 6(3) of the Act provides, inter alia, that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations, or the term is unconscionable. Given the Tenant's undisputed evidence that the Landlord informed the Tenant that if the Tenant did not agree to the rent increase the Tenant would have to move I find on a balance of probabilities that the Tenant was coerced into signing the tenancy agreement with the term increasing the rent. Further there is no evidence that the Landlord gave the Tenant three months notice of the rent increase on the approved RTB form or that the rent increase was within the allowed limit. I also consider the Landlord's evidence that the rent increase was subsequently revoked. For these reasons I find that the tenancy agreement term raising the monthly rent by \$100.00 is not enforceable and that the monthly rent remains at \$600.00 until increased as allowed under the Act. Given the Landlord's agreement to return the extra rents paid for March and April 2021, I find that the Tenant is entitled to the compensation claimed of **\$200.00**. The Tenant may deduct this amount from future rents payable in full satisfaction of this claim.

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(4)(a) of the Act provides that within 5 days after receiving a notice under this section,

the tenant may pay the overdue rent, in which case the notice has no effect. Given the undisputed evidence that the Tenant paid the rent noted as due on the March Notice on the same day that the March Notice was given to the Tenant, I find that the March Notice is not effective. The Tenant is entitled to its cancellation. As the April Notice included the rent increase that has been found unenforceable, I find that the April Notice is not valid for the amount of unpaid rent set out on the April Notice. The Tenant is entitled to its cancellation.

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant is repeatedly late paying rent or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. As the Landlord has only provided evidence of two late rent payments, I find that the Landlord has not substantiated that the Tenant has been repeatedly late paying rent and that this reason for the Cause Notice is not valid. The tenancy agreement only notes that smoking is not allowed in the building and does not indicate that it is a material term of the tenancy. The Landlord's evidence that the Tenant was not informed of the serious nature of this term and the letter about the non-smoking breach does not set out that the Tenant breached a material term. For these reasons I find on the Landlord's evidence alone that the Landlord has not substantiated that the Tenant breached a material term of the tenancy and that this reason for the Cause Notice is not valid. As neither reason for the Cause Notice has been found valid I find that the Cause Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

Conclusion

The notices to end tenancy are cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 23, 2021

Residential Tenancy Branch