



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910126039: CNR-MT, DRI, PSF, OLC

File #910128826: OPR, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on September 6, 2023 (the “10 Day Notice”);
- an order pursuant to s. 66 for more time to dispute the 10 Day Notice;
- an order pursuant to ss. 43 and 62 disputing a rent increase;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

P.D. files an application naming the Tenant as a respondent in which he seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10 Day Notice; and
- return of the filing fee pursuant to s. 72.

Y.S. appeared as the Tenant. The Tenant had the assistance of S.G., who translated and made submissions on the Tenant’s behalf.

Neither the Landlord, nor did P.D. attend the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The Tenant advised that he served his application by way of registered mail sent on September 13, 2023. I accept the Tenant's undisputed testimony that he served his application by way of registered mail. I find that this was done in accordance with s. 89(1) of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant's application on September 18, 2023.

The Tenant further advised that he served his evidence on the Landlord by way of registered mail sent on October 6, 2023. I accept the Tenant's undisputed testimony that he served his evidence by way of registered mail. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Landlord received the Tenant's evidence on October 11, 2023. I note that the evidence's deemed receipt complies with Rule 3.14 of the Rules of Procedure.

The Tenant denies receipt of the cross-application in which he is named as respondent. The cross-applicant, P.D., did not attend the hearing to testify to service of his application. I find that the cross-applicant failed to demonstrate service of his application. As such, I dismiss his application without leave to reapply.

Preliminary Issue – Tenant's Claim under s. 62 of the *Act*

The Tenant's application lists the claim under s. 62 of the *Act* that the Landlord comply with the *Act*, tenancy agreement or Regulations as follows:

As tenancy I have an obligation to comply with the act. with the same magnitude, the landlord has no legal right to vacate me with no legal justification behind. I still respect the act, regulation or tenancy agreement and I strongly oppose the landlord for sending me 80% increase of the rent, which is against the act. I urge your office to refrain the landlord for demanding the amount \$1500 and not to vacate me.

Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application. In this instance, I find that the Tenant's claim under s. 62 of the *Act* is merely a

continuation of the Tenant's other claims disputing the rent increase and the 10 Day Notice. As such, I find that it was improperly pled given the other claims made.

Since no independent relief is claimed under s. 62 of the *Act*, I dismiss this portion of the Tenant's application without leave to reapply.

Issues to be Decided

- 1) Should the disputed rent increase be upheld?
- 2) Should the Tenant be given more time to dispute the 10 Day Notice? Is the 10 Day Notice enforceable?
- 3) Should the Landlord be ordered to provide services or facilities to the Tenant?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The Tenant confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in October 2018.
- At the outset of the tenancy, rent of \$800.00 was due on the first day of each month.
- The Tenant paid a security deposit of \$400.00 to the Landlord.

The Tenant has provided a copy of the original tenancy agreement signed between he and the Landlord. I note that the cross-applicant, P.D., is not listed as a party to the tenancy agreement.

1) Should the disputed rent increase be upheld?

Part 3 of the *Act* sets how and when a landlord may increase rent paid by a tenant. Section 42 requires landlords to give written notice of rent increase, that it be in the proper form, that tenants be given 3 months notice, and that the increase not be imposed 12 months since the previous rent increase or the beginning of the tenancy.

Section 43(1) of the *Act* limits rent increase to the percentage set in the Regulations or as agreed to with a tenant in writing.

The Tenant explained that he agreed to a rent increase of \$100.00 with the Landlord in early August 2023. I am directed to text messages in evidence between he and the Landlord, which the Tenant says was sent on August 4, 2023. Those messages show that the Landlord communicated that P.D. would attend the property to speak with the Tenant about a rent increase, and the Tenant responded saying he would agree to an increase of \$100.00.

The Tenant advised that he received a text message from P.D. on September 3, 2023 in which he demanded the Tenant pay \$1,500.00 in rent. The Tenant refers me to those text messages in his evidence, which show a demand for \$1,500.00, the Tenant protesting, and the P.D. emphasizing that “[a]ccording to me rent has been \$1500”.

The Tenant emphasized that he has no issue paying the additional \$100.00 and had paid \$900.00 in rent for September and October 2023. However, he says that he had never received a notice of rent increase from the Landlord.

I have little difficulty finding that the purported rent increase in the text message of September 3, 2023 is unlawful. It is not in the proper form and does not provide the Tenant with 3 months’ notice. I further accept that up to that point, rent was paid in the amount of \$800.00 per month as evidenced in the tenancy agreement. The demanded increase of \$700.00 is clearly contrary to the permitted increase set by the Regulations.

The Landlord, through P.D., made a bare demand for a rent increase in clear and obvious contravention to Part 3 of the *Act*. I find that no rent increase was lawfully imposed and that rent is still payable in the amount of \$800.00 as set out in the tenancy agreement.

Though the Tenant says he consents to the increase to \$900.00, I note that the Landlord did not agree to the Tenant’s offer sent on August 4, 2023. The Tenant may have paid \$900.00 but is doing so voluntarily as there is no written agreement to this increase as permitted under s. 43(1)(c) of the *Act*.

I hereby grant the Tenant his requested relief. I find that the purported rent increase stated in the text message correspondence is unlawful and is of no force or effect.

2) *Should the Tenant be given more time to dispute the 10 Day Notice? Is the 10 Day Notice enforceable?*

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

The Tenant says he personally received the 10 Day Notice on September 6, 2023. Upon review of the application and in consideration of Rule 2.6 of the Rules of Procedure, I find that he filed his application on September 8, 2023. As such, I find that the Tenant filed his application within the 5 days permitted to him under s. 26(4) of the *Act* such that his request for additional time under s. 66 was unnecessary.

Since the Landlord failed to attend the hearing, I find that they have failed to discharge their burden of proving why the 10 Day Notice was served. As such, the 10 Day Notice is hereby cancelled and is of no force or effect.

Further, the Tenant explains to me, and I accept, that the 10 Day Notice was issued on the basis that the Tenant failed to pay the rent increase demanded by the Landlord. I note that this corresponds with the notation for the rent due on the second page of the 10 Day Notice. In other words, I further find that the 10 Day Notice was issued on the basis of the unlawful rent increase demanded by the Landlord, such that I would not enforce the notice in any event.

3) *Should the Landlord be ordered to provide services or facilities to the Tenant?*

Section 27(1) of the *Act* prohibits landlords from terminating or restricting access to a service or facility if the service or facility is essential to a tenant's use of the rental unit as a living accommodation or providing that service or facility is a material term of a tenancy agreement. However, s. 27(2) of the *Act* permits landlords to terminate a service or facility, other than those referred to under s. 27(1), if they given a tenant 30 days written notice, in the approved form, and reduce rent in an amount equivalent to the reduction in value of the tenancy agreement from the loss of the service or facility.

The Tenant explains that his tenancy agreement lists that he is to have access to parking for one car but that this has become an issue since a new tenant has moved into the rental unit above his at the residential property. The Tenant says that he used to park on the street until the new tenant moved in, after which point the new tenant took his street stall. The Tenant further explains that he went to park on the driveway at the residential property but was told he could not do so.

The Tenant says he raised this issue with the Landlord who advised him that he could not park on the driveway.

Review of the tenancy agreement shows that rent includes parking for 1 vehicle. In other words, the parties contracted for the Tenant to be permitted to park one vehicle at the residential property. This does not include parking on the street, which is not within the control of the Landlord as it is public property. Simply put, the Tenant has right to one parking stall, that this is included in his rent, and that by preventing the Tenant from making use of the stall the Landlord is in breach of the tenancy agreement.

I find that the Tenant has proven that the Landlord has unlawfully restricted his access to a parking stall at the residential property in contravention of s. 27 of the *Act*. As such, I order that the Landlord provide the Tenant access to the parking stall immediately as required under the tenancy agreement.

Conclusion

I find that the Landlord's demand for a rent increase was unlawful. It is of no force or effect.

I hereby cancel the 10 Day Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I order that the Landlord immediately provide the Tenant with parking for one vehicle at the residential property as required under the tenancy agreement.

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: October 26, 2023

Residential Tenancy Branch