

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenants CP and FP attended the hearing.

Landlord RS also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants' Notice of Dispute Resolution was not served in accordance with the Act. FP testified that she had not served it to the Landlord. The Landlord declined to consent to having the Tenant's application adjudicated during the hearing.

I find that the Tenant was served the Landlord's Notice of Dispute Resolution on July 2nd, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service and the Tenants acknowledged such service.

Preliminary Matters

Although the Tenants' application was dismissed due to the failure of the Tenants to serve their Notice of Dispute Resolution to the Landlord, I have referred to and admit as evidence the copy of the Two Month Notice uploaded by the Tenants in order to provide a fuller background to the dispute.

Issues to be Decided

Should the Landlord's Two Month Notice be cancelled?

Are the Tenants entitled to an order regarding the Tenants' dispute of an additional rent increase by the Landlord?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Is the Landlord entitled to an Order of Possession pursuant to a 10 Day Notice for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the either party entitled to recover the filing fee for this application from the other?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord provided a copy of the first two pages of a 10 Day Notice dated May 20th, 2024 in evidence.

The Landlord testified that the rent increased to \$2,350.00 in March, 2024. He testified that the rent increase followed a text conversation with the Tenants beginning in October 2023. He conceded that he did not issue a Notice of Rent Increase.

The Landlord argued that the Tenants agreed to the rent increase, and that the way in which the rent increase was discussed and implemented accorded with the manner in which he and the Tenants had acted during the course of the tenancy.

The Landlord served the Tenants a Two Month Notice on X date, which provided an effective date of September 3rd, 2024.

The Landlord subsequently served the Tenants a 10 Day Notice on July 7th. That Notice cited \$2,350.00 in overdue rent, due on June 15th.

The Landlord testified that the Tenants paid \$1,335.00 on July 7th.

The Tenants testified that the previous rent had been \$1,250.00 per month, and that the increase in rent was over 80%, beyond the permitted increase.

The Tenants testified that they left the rental property on July 30th.

Analysis

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Regardless of whether the Tenants gave notice according to the Act or not, I find that the tenancy has ended. As a result, the Landlord's application for an Order of Possession is moot and is dismissed without leave to reapply.

The Tenants' application to cancel the Two Month Notice must be dismissed as they failed to serve their Notice of Dispute Resolution to the Landlord. As the tenancy has ended and the matter is now moot, I dismiss this application without leave to reapply.

Are the Tenants entitled to an order regarding the Tenants' dispute of an additional rent increase by the Landlord?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

As the Tenant's application was not served under the Act, these claims must be dismissed, with leave to reapply.

Is the Landlord entitled to an Order of Possession pursuant to a 10 Day Notice for Unpaid Rent?

As I have found that the tenancy has ended and the Landlord has repossessed the rental unit, the Landlord's application for an Order of Possession is moot and is dismissed without leave to reapply.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has failed to establish a claim for unpaid rent.

The amounts paid by the Tenant are not in dispute. The only question is whether the rent increase is legal. If the rent increase is legal, the Tenants have failed to pay part of rent for June, and at least part of rent for July; if the rent increase is not legal, the Tenants overpaid the Landlord in March, April, May and June in an amount that exceeds what would have been payable in July.

Part 3 of the Act lays out a comprehensive guide to how a Landlord may increase rent. Section 41 says a landlord may not increase rent except in conformity with the provisions that follow; and section 42(3) states that a landlord must issue a notice of rent increase in the prescribed form.

Here, the Landlord conceded he did not issue a notice of rent increase in the prescribed form with respect to the March 2024 increase. As a result, I find that the rent increase does not conform with the Act and the Tenants were not obliged to pay the increase in rent.

I find that the Tenants have not waived their rights to object to the rent increase: such a waiver must be clear and made with a knowledge of the rights being waived. The Landlord has not provided evidence to establish such a waiver.

To be clear, I make no determination as to how the tenancy ended, and specifically whether the Tenants gave notice to the Landlord to end the Tenancy under section 50; I make no determination as to any previous rent increase was legal under the Act; and I make no determination as to whether the Tenants were obliged to pay July's rent due to the compensation provisions of section 51 of the Act.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Is either party entitled to recover the filing fee for this application from the other?

As the neither party was successful in their application, each party shall bear their own costs. Both the Landlord's and the Tenants' applications for authorization to recover the filing fee for their application under section 72 of the Act are dismissed, without leave to reapply.

Conclusion

The Tenants' application for cancellation of the Landlord's Two Month Notice to End Tenancy under section 49 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order with respect to a rent increase is dismissed, with leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is dismissed, with leave to reapply.

The Landlord's application for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent is dismissed, without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent is dismissed, without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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: September 11, 2024

Residential Tenancy Branch