



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damage or loss, an Order requiring the Landlord to comply with the Act, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. Neither party called witnesses.

None of the documentary evidence that was submitted by the Landlord has been considered in this matter, as the Landlord acknowledged that the Tenant was not served with copies of this evidence.

Issue(s) to be Decided

The issues to be decided are what the terms of the tenancy agreement are for this rental unit in relation to the monthly rent; whether the Tenant is entitled to a monetary order to compensate her for an overpayment of rent and whether the Tenant is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Tenants resided in this rental unit prior to the Landlord purchasing the unit on May 29, 2009, at which time the rental unit was partially furnished by the Landlord.

The Tenant stated that she moved into this rental unit on April 01, 2008, at which time she agreed to pay \$600.00 for the use of one of the bedrooms, with the understanding she would share the furnished rental unit with other occupants. The Tenant stated that

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her mother moved into this rental unit on May 01, 2008, at which time she agreed to pay \$600.00 for the use of the second bedroom, with the understanding she would share the furnished rental unit with other occupants. There was another person occupying a third bedroom in the rental unit. All the occupants had access to the common areas, which included a kitchen and living area.

The Tenant stated that in December of 2008 the third occupant moved out of the rental unit and she and her mother began renting the entire rental unit for \$1,850.00 per month, at which time they had exclusive use of the common area.

The Landlord and the Tenant agree that the parties signed a written tenancy agreement on March 24, 2009. The tenancy agreement, which was submitted in evidence, indicates that the tenancy will commence on June 01, 2009 and that the Tenants will pay monthly rent of \$1,500.00. Both parties indicated that they understood that the Tenants would be using two of the three bedrooms, but that they would have exclusive use of the common area.

The Landlord and the Tenant agree that the Tenants stopped using the third bedroom in the rental unit on June 01, 2009. The parties agree that the Tenant paid \$1,850.00 in rent for June of 2008. The Tenant stated that she paid this amount because she was unsure of the rent that was due so she continued to pay the amount that she had previously been paying.

The Tenant contends that the tenancy agreement she signed with the new Landlord on March 24, 2009 is invalid because it was signed prior to the Landlord owning the rental unit. She also contends that the agreement constitutes an illegal rent increase because the Tenants will be paying significantly more than the \$1,200.00 they were previously paying for the two bedrooms.

The Landlord argued that that \$1,500.00 is fair market value for the rental unit because the Tenants have exclusive use of the common areas, while they were sharing those areas with a third person when they were only paying \$1,200.00.

The Tenant stated that she had been told by the Landlord that the third bedroom has been rented to a third party. At the hearing the Landlord declared that the third bedroom was not rented, although it is furnished with property belonging to the Landlord.

Analysis

I find that the new Landlord and the Tenant signed an agreement on March 24, 2009 that related to a tenancy that was scheduled to begin on June 01, 2009. As the

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Landlords were the owners of the rental unit on June 01, 2009, I find that they had the right to enter into a tenancy agreement that began on that date. I find it irrelevant that the tenancy agreement was signed prior to the date of ownership, as there was no evidence to show that the Landlord misrepresented herself or that she was unable to fulfill any of the terms of the tenancy agreement that was signed.

Section 1(a) of the *Residential Tenancy Act (Act)* defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Section 1(b) of the *Act* defines a landlord as the heirs, assigns, personal representatives and successors in title to a person referred to in Section 1(a) of the *Act*.

As a successor in title, the new Landlord assumed the rights and responsibilities of the previous Landlord. As such, the new Landlord had the obligation to either continue with the terms and conditions of the tenancy agreement that existed when she purchased the property or to amend the tenancy agreement in accordance with the *Act*.

The undisputed evidence is that the tenancy agreement that was in place when the Landlord purchased the property was that the Tenants had exclusive use of three bedrooms and the common area in exchange for a monthly rent of \$1,850.00. At the hearing both parties indicated that they did not wish to continue with these terms of the tenancy agreement.

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove, or change a term, other than a standard term, only if both the landlord and the tenant agree to the amendment. In the circumstances before me, I find that on March 24, 2009, the Landlord and the Tenant agreed to make the following amendments to their rental agreement:

- The monthly rent will be reduced from \$1,850.00 to \$1,500.00
- The Tenants will only have the use of two of the three bedrooms in the rental unit, although they would retain the exclusive use of the living room, bathroom, and washroom
- The Tenants will have exclusive use of the laundry area.

In reaching this conclusion, I relied heavily on the tenancy agreement that the party signed on March 24, 2009, which clearly states the monthly rent is \$1,500.00.

In reaching this conclusion, I also relied on the testimony of both parties, who agreed that the Tenants, would have the use of two bedrooms; the exclusive use of the common areas; and the exclusive use of the laundry facilities.

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I reject the Tenant's argument that the \$1,500.00 monthly rent constitutes an unlawful rent increase because it is actually less than the Tenants had been paying when the Landlord purchased the residential complex. More importantly, it cannot be considered a rent increase because it involved a change in the terms of the tenancy on June 01, 2009. Specifically, the Tenants stopped using one of the bedrooms; they retained exclusive use of the common areas; and their rent was reduced from \$1,850.00 to \$1,500.00.

The Tenant is attempting to compare the monthly rent of \$1,500.00 with the rent of \$1,200.00 that they were paying prior to December 01, 2008. I find this to be an irrelevant correlation, as the terms of the tenancy agreement prior to December 01, 2008 involved the shared use of common areas and the new tenancy agreement involves the exclusive use of those areas. More importantly, the tenancy agreement which required the Tenant to pay \$1,200.00 had been amended and was no longer in effect when the new Landlord took possession of this rental unit.

The Landlord and the Tenant agreed that rent has not been paid for July of 2009. The Tenant stated that she has not paid the rent for July because she believes she has already overpaid the rent and she does not know how much is now due. The Tenant was instructed to pay \$550.00 in rent for July, until such time as I ascertain the amount of rent that is due.

Conclusion

I find that the terms and conditions of this tenancy agreement were amended, by mutual consent, on March 24, 2009. I find that the terms and conditions of the rental agreement are set out in the tenancy agreement that was signed on March 24, 2009. Specifically, I find that the parties agreed that the monthly rent will be \$1,500.00.

As the parties verbally agreed at the hearing that the Tenants would only use two of the three bedrooms in the rental unit and that they would have exclusive use of the common areas, I find that this is one of the terms of their tenancy agreement, even though it is not specifically outlined in the agreement.

As the parties verbally agreed at the hearing that the Tenants would have the exclusive use of the laundry facilities, I find that this is one of the terms of their tenancy agreement, even though the tenancy agreement indicates laundry facilities are not included in the rent.

As the parties verbally agreed at the hearing that the utilities were included in the rent, I find that this is one of the terms of their tenancy agreement, even though the tenancy agreement indicates utilities are not included in the rent.



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The undisputed evidence is that the Tenant paid \$1,850.00 for rent for June of 2009, which is \$350.00 more than the \$1,500.00 I have determined was due. I hereby authorize the Tenant to reduce her monthly rent payment for July of 2009 by the \$350.00 overpayment, leaving outstanding rent of \$1,150.00 for July of 2009. Assuming the Tenant has paid \$550.00 in rent for July as directed at the hearing, I find that she still owes \$600.00 in rent for July of 2009.

The Landlord retains the right to serve a Notice for Unpaid Rent and/or to file an Application for Dispute claiming for the rent if the outstanding rent of \$1,150.00 for rent is not paid.

I decline to award the Tenant compensation for the cost of filing this Application for Dispute Resolution, as I have found her application to be without merit.

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: July 14, 2009.

Dispute Resolution Officer