



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

DRI, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to dispute an additional rent increase, other issues and to recover the filing fee.

The tenants served the landlords in person on October 02, 2009 and October 04, 2009, 2009 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence to dispute an additional rent increase?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on December 15, 2008. This is a fixed term tenancy due to end on December 14, 2009. The amount of rent paid for this property is in dispute. The tenants claim rent is \$1,400.00 per month and the landlords claim the rent has always been \$1,500.00 with a \$100.00 discount for work carried out by the tenants. The tenants paid a security deposit of \$700.00 on November 23, 2008.

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The tenants testify that they entered into an agreement with the landlords to rent the upstairs of this two level property. The rent was higher then the tenants wanted to pay at \$1,500.00 and the landlords reduced the rent to \$1,400.00 including utilities. For this reduction of \$100.00 the tenants agreed to do snow clearance and yard maintenance for both levels of the property. The tenancy agreement dated November 23, 2008 states that the lease amount for the 12 months is \$16,100.00 at \$1,400.00 per month. The tenants gave the landlord a cheque for \$700.00 for the remainder of December, 2008 rent and post-dated cheques of \$1,400.00 for the remainder of the lease term as specified in the tenancy agreement.

The tenants testify that the tenancy agreement also states a separate clause that the tenants acknowledge that the rent was reduced by \$100.00 per month in exchange for keeping the driveways and walkways for both levels clear of snow during winter and maintaining the yard during the summer. The clause goes on to state that the tenants will be responsible for costs relating to these services should they not perform them.

The tenants testify that the landlord re-rented the lower level of the property and told the tenants that they no longer required them to clear the snow or carry out yard maintenance for the lower level unit as the new tenants would be responsible for their own area. The tenants testify that the landlords have now hired a gardener and did not tell the tenants that the work they did on the yard was not to the landlord's standard. The tenants testify that they are still willing to do this work. The tenants testify that the landlords did not state that the rent would increase because they no longer required the tenants to do work for the lower level unit. The tenants asked the landlords to renew the lease for another year. The tenants received a Notice of rent increase dated September 30, 2009. This stated that the rent was \$1,500.00 and will be increased by \$48.00 beginning on January 01, 2010.

The landlords testify that they allowed the tenants a rent deduction in lieu of work the tenants would do in yard maintenance and snow clearance for the downstairs property where the landlord's daughter lived. When they re-rented the downstairs unit the responsibility for this work passed to the new tenants. The landlord's testify that the tenants upstairs were always responsible for doing this work for their own rental unit. The landlords claim the tenants did not

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do the yard work to the landlord's standards and they have now hired a gardener to carry out the work. The landlords claim that the rent was always \$1,500.00 per month with a \$100.00 per month reduction for the work and it has reverted back to this amount now the tenants are no longer required to do any snow clearance or yard work for the downstairs property. The landlords testify that the tenants have always been responsible for doing this work on their own rental property.

The landlords testify that when they were approached by the tenants to renew the lease they were happy to renew the lease and revert back to the \$1,500.00 per month plus an additional amount of \$48.00 as an annual increase.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I have carefully considered the clause in the tenancy agreement and find the wording is unclear in its intention as to whether the tenants are required to pay the \$100.00 for the reduced rent if they no longer carry out the snow clearance and yard work or if they have to pay for the work themselves if they no longer do it. I find that the wording refers to a rent reduction of \$100.00 for carrying out this work on both levels of the property. As the landlords no longer require the tenants to do this work for the lower level I find they may increase the rent by \$50.00 per month. The clause specifies that the tenants were given the rent reduction for doing the work for both levels of the property. As they are now only required to do the work for their own level the tenants are only entitled to half the rent reduction previously agreed.

Due to the above I find the tenancy agreement for the fixed term from December 15, 2008 to December 14, 2009 showed that rent was \$1,400.00 per month with a rent reduction of \$100.00. As this is a fixed term tenancy agreement and does not specify that at the end of the fixed term the tenants are required to move out then the agreement reverts to a month to month tenancy at the end of the fixed term. The landlords are able to increase the rent by the amount allowed for January 2010 of 3.2%. Therefore, the new rent is set at \$1,450.00 and the amount



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the landlords may increase the rent is \$46.40 per month bring the new monthly rent from January, 2010 to \$1496.40.

Conclusion

I HEREBY FIND in partial favor of the tenants' application. I Order the landlords to comply with the Act with regards to increasing the rent for 2010. I Order the new rent increase to be based on **\$1,450.00** rent per month at **3.2%** to a total amount of rent of **\$1496.40**.

I Order, that the landlords bear the cost of the filing fee paid for this hearing. The tenants may therefore deduct **\$50.00** from the next rent payable to the landlords.

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: November 17, 2009.

Dispute Resolution Officer