



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for an order to the Landlords to comply with the Residential Tenancy Act (the "Act") with regards to rent increases, and to recover their filing fee for this Application.

The Landlords and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Tenants stated that they applied for Dispute Resolution on March 15, 2012 requesting that the Landlords be ordered to retract a rent increase Notice. The Tenants were required to pay a \$50.00 filing fee to make the Application

The Landlords stated that they advised the Tenants by email that they had decided to withdraw the rent increase Notice as of March 17, 2012.

As the Landlords have stated that the rent increase Notice of February 29, 2012 has been cancelled, I accept that this is so. As a result I confirm that the rent increase Notice has been cancelled.

The Tenants stated that of the issues identified on their Application, the only issue remaining as of the date of this hearing is the request for reimbursement of their filing fee.

Issue(s) to be Decided

Should the Landlords be ordered to pay the filing fee?

Background and Evidence

The parties agree that the Tenants have a fixed term written tenancy agreement which began on November 01, 2011 and is to end on August 31, 2012. The Tenants currently reside at the rental property at the time of this hearing. The tenancy agreement of November 01, 2011 was provided into evidence by the Tenants.

The Tenants stated that the Landlords served them with a rent increase Notice on February 29, 2012 to be effective June 01, 2012. The Tenants provided a copy of the rent increase Notice from the Landlords into evidence. The Tenants stated that they sought advice from our office about whether the rent increase Notice was allowable. The Tenants stated that after receiving advice from our office they advised the Landlords in writing on March 09, 2012 that they disagreed with the Notice as their tenancy agreement was for a fixed term and they have been under the agreement for only a couple of months when the rent increase Notice was served. The Tenants stated that the Landlords did not retract the Notice when they raised their objection. The Tenants stated that they applied for Dispute Resolution on March 15, 2012 requesting that the Landlords be ordered to retract the Notice. The Tenants were required to pay a \$50.00 filing fee to make the Application. The Tenants stated that they sent the Application and Hearing Notice to the Landlords by registered mail on March 15, 2012.

The Landlords confirmed that the Tenants signed a new fixed term tenancy agreement for November 01, 2011, however the Landlords stated they did not adjust the rent at that time. The Landlords stated that they served a rent increase Notice on the Tenants on February 29, 2012 because they thought they could do this as the Tenants had been their Tenants for more than one year with a previous tenancy agreement before the fixed term agreement of November 01, 2011. The Landlords stated that they had requested that the Tenants sign the rent increase Notice served on February 29, 2012 but the Tenants had declined to do so.

The Landlords stated that the Tenants emailed the Landlord on March 05, 2012 to inquire if they could end their tenancy early. The Landlords stated that they did not agree to this and the tenancy continued. The Landlords stated that the Tenants formally advised them in writing on March 09, 2012 of their objection to the rent increase Notice, however, the Landlords stated they did not receive this letter until March 14, 2012. The Landlords stated that they contacted their legal counsel by email on March 14, 2012 and forwarded a copy of that email to the Tenants to let them know they were seeking advice on whether the rent increase was allowable. The Landlords stated that they advised the Tenants by email on the evening of March 17, 2012 that they would be retracting the rent increase Notice based on the advice of their legal

counsel. The Landlords submitted copies of the emails with the Tenants into evidence and provided a copy to the Tenants. The Landlords stated that they did not know the Tenants had filed for dispute resolution until they received the Application and Hearing package by registered mail which arrived shortly after the email of March 17, 2012. The Landlords stated that the Tenants should have waited and not filed an Application, as the Landlord was seeking advice from legal counsel. The Landlords position is that the Tenants should not be reimbursed for the \$50.00 filing fee.

The Tenants request that the Landlords should reimburse them for the \$50.00 filing fee for this Application, as the Tenants had filed their Application prior to the Landlords advising them the rent increase Notice would be cancelled.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenancy agreement signed by the parties is effective November 01, 2011 to August 31, 2012, for a fixed term of less than one year.

Residential Tenancy Policy Guideline 30 states the following with regards to rent increases and fixed term tenancies:

Rent Increases and Fixed Term Tenancies

The rent increase provisions of the Legislation apply to fixed term tenancy agreements. If the parties so agree, the fixed term tenancy agreement may specify that the rent shall continue to be the same amount throughout the fixed term. The parties may not, however, agree that the rent will increase during the fixed term as this would potentially contravene the justified rent increase provisions of the Legislation.

Renewing a Fixed Term Tenancy Agreement

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term.

The Landlords evidence is that they contacted their legal counsel for advice after the Tenants formally advised them in a letter of March 09, 2012 that the rent increase Notice given to them on February 29, 2012 was not allowable under the tenancy agreement and Act. The Act does not provide any timeframes in which tenants should wait before requesting an order to cancel a rent increase Notice. The Tenants filed their

Application on March 15, 2012 which is 15 days after the date they received the rent increase Notice. I note that the Landlords' evidence of cancellation of the rent increase Notice is solely in the form of an email on the evening of March 17, 2012 to the Tenants. I find that at the time the Tenants filed their Application for dispute resolution the rent increase Notice had not been cancelled.

I find that it is appropriate to order the Landlords to pay the Tenants for the filing fee for this Application (\$50.00). As a result, I order the Tenants to recover the \$50.00 filing fee for this proceeding by deducting it from their next rent payment due.

Conclusion

I have granted the Tenants' request to recover the \$50.00 cost of the Application fee, and ordered them to deduct it from their next month's rent.

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: April 13, 2012.

Residential Tenancy Branch