



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHERN PROPERTY/R.E.I.T
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNC, OPT, MNDC, FF,

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute the expiry of a fixed term agreement, to cancel an additional rent increase, to cancel a notice to end tenancy for cause, to obtain an order of possession of the rental unit, for a monetary order for damages or loss under the Act and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

At the outset of the hearing the tenant indicated that they were not served with a notice to end tenancy for cause. The tenant further stated that they do not need an order of possession of the rental unit as they have always had possession of the unit.

Issue to be Decided

Has the fixed term agreement expired?

Should the additional rent increase be cancelled?

Is the tenant entitled to a monetary order for damages or loss under the Act?

Background and Evidence

The parties entered into a fixed term tenancy which began on October 1, 2012 and was to expire on September 30, 2013. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit of \$462.50 was paid by the tenant. The fixed term agreement also provided the tenants with a rent incentive equivalent to the amount of \$30.00 per month. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that they seek to have the expired fixed term agreement revert to a month-to-month. The tenant stated that they made a formal request to the landlord,

however, the request for a month-to-month tenancy was denied. The tenant stated that if there is no date specified in that agreement then it reverts to month-to-month.

The landlord's agent testified that the tenancy agreement is a fixed term agreement and expired on September 30, 2013. The landlord's agent stated that the tenancy also provided a term that the tenant must move out of the rental unit on September 30, 2013.

The tenant testified that the landlord provided him with a notice of rent increase.

The landlord's agent testified that they sent the tenant a notice of rent increase, however, it was merely to indicate that they would not be receiving a rent incentive if the parties agreed to enter into a new fixed term agreement, the economical rent did not change.

The tenant testified that they found out that the hot water heat to the building had been turned off during the summer months and seeks compensation for loss of heat, which is included in the fixed term agreement. The tenant stated that on September 15, 2013, they turned the thermostat up to 25 degrees celsius for about thirty minutes and there was no heat. The tenant stated that he did not notify the landlord. The tenants seek compensation in the amount of \$358.00.

The landlord's agent testified that the tenants have never been without heat. The landlord's agent stated that during the summer months the heat sensor on the building controls the heat and if the air temperature is higher the heater will not turn on.

Analysis

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

The parties entered into a fixed term tenancy agreement on October 1, 2012, which expired on September 30, 2013. The evidence of the tenant was that he does not want to enter into a new fixed term agreement and seeks to enter into a month-to-month tenancy agreement under the Act.

Upon my review of the tenancy agreement filed as evidence, the agreement indicated the fixed term ends on September 30, 2013, and at the end of this time the tenancy is ended and the tenant must vacate the rental unit. This is initialled by the tenants and the landlord.

In this case, the tenants seek to have the fixed term agreement revert to month-to-month. However, I find there is no provision under the Act that gives me the authority to

change the terms of a tenancy agreement that was entered into by both parties and that agreement complies with the Act. I find the tenancy agreement has expired and the tenancy legally ended on September 30, 2013, in accordance with the Act. Therefore, I dismiss this portion of the tenants' application.

The tenants disputed an additional rent increase, however, the evidence of the landlord was that the economical rent did not change. The evidence of the landlord was that they sent the notice of rent increase only to indicate to the tenants that they would not be receiving the rent incentive, should the tenants enter into a new fixed term agreement.

Upon my review of the tenancy agreement and notice of rent increase, I find the economical rent did not change. I accept that landlord's agent evidence that this was merely a way to notify the tenants that the rent incentive they were currently receiving would not apply if a new fixed term agreement was entered into by the parties. However, a letter may have been a simpler to convey this message to the tenants. I find the tenants have failed to prove a violation of the Act. Therefore, I dismiss this portion of the tenants' application.

The evidence of the tenant was that they seek compensation for loss of heat during the summer months. The evidence of the tenant was they turned the heat up to 25 degrees celsius and there was no heat. The evidence of the tenant was that they never notified the landlord that a problem exists. The evidence of the landlord's agent was that there has never been a loss of heat. The evidence of the landlord's agent was that during the summer months the heat sensor on the building controls the heat and if the air temperature is higher the heater will not come on.

In this case, the tenants are claiming loss of heat during the summer months. However, the tenants did not notify the landlord that a problem exists. A party cannot be held responsible when not notify that a problem may exists.

Further, there was no testimony or evidence that supported that the tenants suffered any negative result, such as being cold. Simply turning your thermostat to an unusually high temperature of 25 degrees celsius is not grounds for compensation. I find the tenants have failed to prove a loss exists or a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenants' application.

As the tenants were not successful with their application, the tenants are not entitled to recover the cost of filing their application.

Conclusion

The tenants' application 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 *Residential Tenancy Act*.

Dated: October 30, 2013

Residential Tenancy Branch

