



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First Investments Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, O, FF

Introduction

This hearing was convened in response to an application by the tenants requesting assistance in interpreting their tenancy agreement. At the outset of the conference call hearing, I asked parties on the line to identify themselves and the tenants identified themselves but the landlord did not. I performed a roll call using the automated system and it showed that only the tenants and myself were in the conference call. The hearing proceeded with me receiving only the tenants' testimony and after approximately 18 minutes, the landlord advised that she was on the phone and had been present throughout the entire hearing. She insisted that she had identified herself at the beginning of the hearing, although none of the other participants could hear her. I took the landlord's testimony after she confirmed her presence.

Issues to be Decided

Are the tenants required to vacate the rental unit or will their tenancy continue on a month to month basis?

Was the landlord allowed to raise the rent after the end of the first fixed term?

Background and Evidence

The tenancy initially began in September 2012 and was set to run for a fixed term of 12 months, at the end of which the tenants were to vacate the rental unit. The parties chose to enter into a second tenancy agreement and again, the contract provided that the tenants were to vacate the rental unit at the end of the term, August 31, 2014. The tenants signed to acknowledge that they understood they were to vacate the unit and they signed the agreement but the landlord did not. The tenants testified that they paid rent in the month of September and that the landlord did not issue them a receipt for use and occupancy only. The landlord testified that she did not issue a receipt for use and occupancy because she believed that the tenants should have assumed that the acceptance of rent did not indicate the continuation of the tenancy as there was a dispute underway.

The tenants testified that from September 2012 – August 2013 they were paying \$1,900.00 per month and that after they signed the new tenancy agreement, they began paying \$1,960.00 per

month in September 2013. They asked whether the landlord was required to give them a notice of rent increase in order to collect more rent under the new agreement.

Analysis

I find that the tenants are bound by the terms of the 2013-2014 agreement despite the absence of the landlord's signature. The tenants have been paying the new rent and continued their tenancy with the understanding that the agreement was in force and I find that the landlord's failure to sign the agreement was an inadvertent omission. However, I find that because the landlord accepted rent for the month of September without qualification, she has reinstated the tenancy. I have arrived at this conclusion because if the landlord had expected that the tenancy had ended at the end of August, she should have either refused rent or made it clear to the tenants that it was simply occupational rent accepted while waiting for a final determination of this dispute. I therefore find that the tenancy will continue on a month to month basis on the same terms as are outlined in the 2013-2014 agreement.

The tenants chose to enter into a tenancy which required them to vacate the rental unit at the end of the term. There is no evidence that the landlord misrepresented the terms of the agreement or coerced them to sign the agreement and I therefore find that the landlord was free to demand that the tenants either vacate the unit in August 2013 or sign a new agreement with new terms. I therefore find that no illegal rent increase has taken place as the tenants freely entered into a new tenancy agreement.

I note that at the hearing, the landlord expressed concern that the rent received for the rental unit is below market value. The landlord is free to file an application for dispute resolution for an additional rent increase.

Conclusion

The tenancy will continue on a month to month basis with rent fixed at \$1,960.00 per month. As the tenants' confusion was caused by the landlord's failure to properly execute the contract, I find it appropriate that the landlord bear the cost of the filing fee. The tenants may deduct \$50.00 from a future rental payment.

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: September 26, 2014

Residential Tenancy Branch

