



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, DRI, CNR, MNDC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 3, 2014 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- an order regarding a disputed additional rent increase, pursuant to section 43; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67.

The landlord's agent, AR ("landlord") and the tenants' agent, JK ("tenants") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. Both agents confirmed that they had authority to act as agents on behalf of their respective party, at this hearing.

The landlord testified that she served the tenants with the 10 Day Notice on December 3, 2014, by way of posting it to their rental unit door. The tenants' agent confirmed receipt of the 10 Day Notice but was unsure of the exact date of receipt. He stated that he became aware of the 10 Day Notice on December 5, 2014, after which he applied as soon as reasonably possible. As per section 88 of the *Act*, I accept the tenants' agent's testimony that the tenant received the 10 Day Notice on December 5, 2014.

The tenant's agent testified that he personally served the landlord with the tenants' application for dispute resolution hearing package ("Application") on December 13, 2014. The landlord confirmed receipt of the tenants' Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application on December 13, 2014.

Issues to be Decided

Should the tenants be permitted more time to make an application to cancel the landlord's 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2013 for a fixed term of one year ending on June 30, 2014. After this fixed term period, the tenancy would continue on a month to month basis or another fixed length of time. The landlord confirmed that this tenancy is currently on a month to month basis. Only the one tenant, JAR, currently resides in the rental unit. The other named tenant, JR, is a guarantor for the lease and rent payments for JAR, as JAR is under a disability.

A written tenancy agreement, signed by both parties on June 29, 2013, was provided with the tenants' Application. The landlord confirmed that another landlord company, FPGL, was the "former landlord" for this rental unit that established and signed the tenancy agreement. She stated that the current landlord company named in this application, MEC, bought the rental building from the former landlord on May 25, 2014. At that time, all tenancies and their respective rights and monies transferred over to this current landlord, as per the landlord's evidence.

The landlord testified that rent in the amount of \$700.00 is payable on the first day of each month according to the tenancy agreement. However, the landlord confirmed that "Schedule A," an addendum to the residential tenancy agreement, offered a rental incentive of \$100.00 off rent per month. This reduced the monthly rent amount to \$600.00 per month. The addendum was signed by the former landlord and both tenants on June 29, 2013. The addendum states that it takes effect as part of the tenancy agreement and is enforceable by law, but does not indicate any expiry dates. It only includes conditions of termination if tenants do not pay rent on time or issue cheques that are later dishonoured.

The landlord testified that she provided the tenants with a letter sometime in June or July 2014, but neither party provided the letter for this hearing. Sample letters from other tenants were provided by the tenants in their application, and the landlord confirmed that she sent the same letter with different dates, to these tenants in this application. The letter states that the tenants' fixed term lease would be expiring, that any rental incentives would expire as well, and that they could either re-sign a lease or continue as a month-to-month tenancy. The letter further indicates that a rental incentive may be offered if a new one year lease is signed, that certain conditions have to be met before the lease signing and that one full month's notice is required if the tenants plan to vacate the rental unit.

The landlord testified that the rental incentive of \$600.00 payable each month expired with the fixed term tenancy on June 30, 2014. She indicated that the rental incentive addendum is unclear as to the date that the rental incentive ends, as it was created by and signed in the name of the former landlord, as was the tenancy agreement. However, the landlord asserted that the incentive ended with the fixed term and new incentives are in place for this current landlord. The landlord stated that the tenant's one bedroom rental unit would be \$800.00 at current market rate with \$100.00 off per month rental incentive, reducing rent to \$700.00 total per month, if a one year lease was signed. As per the landlord's evidence, if no lease was signed and the tenancy continued on a month to month tenancy, the rental rate would revert back to \$700.00 as per the tenancy agreement. Therefore, the landlord asserted that the tenants' monthly rental amount reverted back to \$700.00 as per the tenancy agreement on the month to month tenancy. The landlord stated that whether the tenants signed the one year lease or continued on a month to month basis, they should be paying \$700.00 rent per month from July 1, 2014, onwards, as per the above.

The landlord stated that the tenants paid rent of \$600.00 for each of July, August, September and December 2014, rather than the \$700.00 owing under the tenancy agreement. The landlord claims that the tenants owe \$400.00 in unpaid rent, which includes \$100.00 for each of the above four months. Therefore, the landlord issued the 10 Day Notice for unpaid rent of \$400.00 due on December 1, 2014.

The landlord testified that the tenants have paid \$600.00 for January 2015 rent but that she has not yet issued another 10 Day Notice for \$100.00 in unpaid rent, as she was waiting for the outcome of this hearing and the determination of the tenants' rent increase application.

The tenants dispute that they owe \$400.00 as per the 10 Day Notice. They state that their tenancy should continue, as the 10 Day Notice is not valid. The tenants claim that

their rent is only \$600.00, not \$700.00. The tenants agree that they only paid \$600.00 rent for each of July, August, September and December 2014 because they were legally only required to pay that amount as per their tenancy agreement addendum. The tenants claim that they were not given a legal notice of rent increase from the landlord, increasing their rent from \$600.00 to \$700.00 as of July 1, 2014.

The tenants seek a monetary order for their overpayment of rent of \$100.00 for each of October and November 2014, totalling \$200.00. The tenants state that they did not realize their tenancy rights when they overpaid for rent. They claim that once they discovered that they were not required to pay an illegally increased amount of rent, they reduced their monthly rental payment as of December 2014, back to \$600.00.

The landlord served a Notice of Rent Increase ("NRI"), dated November 30, 2014, on the tenants on the same date. The tenants confirmed receipt on that date. The NRI states that rent in the total amount of \$717.50 is payable starting on March 1, 2015. The current monthly rent indicated on the NRI is \$700.00 and the increase in rent is \$17.50. The tenants state that this is also an illegal rent increase, as their rent is \$600.00, not \$700.00 per month.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices, e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on December 5, 2014, and applied within five days of receipt, on December 9, 2014. Accordingly, the tenants complied with the five day limit under the *Act* and their application for more time to make an application to cancel the landlord's 10 Day Notice, is moot.

Where tenants apply to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that the tenants owe \$400.00 for unpaid rent for July, August, September and December 2014.

At the end of the fixed term on June 30, 2014, both parties confirmed that this tenancy reverted to a month to month tenancy, as per the tenancy agreement and the

agreement of the parties. Both parties agreed that the tenancy agreement addendum does not state an expiry date for the rental incentive of \$100.00 off rent per month. The addendum clearly states that it forms part of the tenancy agreement. Both the tenancy agreement and addendum were issued, created and signed by the former landlord, not this current landlord. The former landlord did not appear at this hearing to provide testimony. The current landlord attempted to interpret the agreement of the former landlord.

Therefore, I find that the tenancy continues on the terms of the original tenancy agreement, which includes the rental incentive of a \$100.00 rental discount per month, making rent \$600.00 per month for this rental unit.

Regardless of whether the tenants were given a written letter stating that this rental incentive would expire, the landlord did not issue a legal notice of rent increase in the approved form, as she is required to do under subsection 42(3) of the Act. Therefore, I find that the landlord illegally increased the tenants' rent from \$600.00 to \$700.00 per month, which she is not entitled to do.

Accordingly, as rent is \$600.00 per month and not \$700.00 per month, I find that the tenants do not owe \$400.00 in rent to the landlord as per the 10 Day Notice. Therefore, the landlord's 10 Day Notice, dated December 3, 2014, is set aside and of no force or effect. This tenancy will continue until it is ended in accordance with the Act.

Although the landlord issued an NRI form on November 30, 2014 and 3 months' notice was provided to the tenants of the rent increase to \$717.50 per month, this rent increase is based on an incorrect starting amount of \$700.00. I find that the monthly rent for the tenants' rental unit was \$600.00 on November 30, 2014 when the NRI was issued. Therefore, the landlord's Notice of Rent Increase, dated November 30, 2014, is cancelled and of no force or effect.

I order that the monthly rent for the tenants' rental unit is \$600.00 payable as per the terms of the original tenancy agreement, signed on June 29, 2013, retroactively effective as of July 1, 2014 and for the remainder of this tenancy, until it is legally changed in accordance with the Act.

I find that the tenants have overpaid rent for October and November 2014, in the total amount of \$200.00. The tenants are entitled to a refund of this \$200.00 amount, from the landlord.

Conclusion

The tenants' application for more time to make an application to cancel the landlord's 10 Day Notice, is moot.

The landlord's 10 Day Notice, dated December 3, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenants do not owe \$400.00 to the landlord as per the 10 Day Notice. The tenants paid the correct amount of rent for January 2015, in the amount of \$600.00.

The landlord's Notice of Rent Increase, dated November 30, 2014, is cancelled and of no force or effect. I order that the monthly rent for the tenant's rental unit is \$600.00, retroactively effective as of July 1, 2014, for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

I allow the tenant's application for a monetary award of \$200.00. I order the tenants to deduct a total of \$200.00 from their future rent to account for their overpayment in rent for October and November 2014.

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: January 14, 2015

Residential Tenancy Branch

