



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION AND RECORD OF SETTLEMENT

Dispute Codes DRI, MNDC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenants for a finding that they had been subject to an illegal rent increase, a monetary order, an order authorizing them to reduce their rent and an order compelling the landlords to perform repairs. Both parties participated in the conference call hearing.

The parties agreed to settle most of the matters at issue on terms which are outlined in the Analysis portion of this decision. The one issue left to be adjudicated is addressed below.

Issue to be Decided

Were the tenants subject to an illegal rent increase and if so, are they entitled to a return of the monies overpaid?

Background and Evidence

The parties agreed that the tenancy began in October 2013 at which time the rent was set at \$2,800.00 per month. The initial term of the tenancy was for 6 months, after which the tenants were required to move out of the rental unit. Before the first fixed term expired, the parties entered into a one year fixed term agreement which kept the rent at the same amount as the prior agreement and required the tenants to vacate the unit on March 31, 2015. In February 2015, the parties again entered into a written tenancy agreement under which the rent was increased to \$2,900.00 per month and the tenants were required to vacate the rental unit when the term expired on March 31, 2016.

The tenants claimed that because the landlords did not attempt to negotiate a new tenancy agreement until February 2015, they were not left with enough time to find a new home and they felt pressured into agreeing to a new rental rate. The tenants claim

that the landlords had promised to renegotiate the agreement each time the agreement approached its expiry and that they had come to rely on that renegotiation and expected to remain in the unit.

Analysis

While the *Residential Tenancy Act* contains rent controls and prohibits landlords from raising rents beyond the prescribed amount, this does not apply to new tenancy agreements. The tenants chose to enter into a series of fixed term tenancy agreements and each time agreed in writing that they were required to vacate the unit at the end of the fixed term. They were well aware that the terms of the tenancy would be renegotiated and although they expected to have the opportunity to renegotiate well in advance of the expiry of each contract, the landlords had no contractual obligation to engage in those negotiations.

Because the tenants entered into a new tenancy agreement after the expiry of each fixed term, I find that no rent increase has been implemented. Rather, I find that the parties simply negotiated a new rental rate for the most recent agreement. While the tenants may not be comfortable with the new rate, I am unable to find that the landlords have in any way breached their obligations under the Act or agreements and therefore I dismiss the claim for a finding that the landlords implemented an illegal rent increase and I dismiss the claim for recovery of the rent paid.

At the hearing, the parties agreed that the tenants would withdraw their claim for repairs and compensation on the following conditions:

- The rent for the unit is reduced to \$2,500.00 per month, effective April 1, 2015. As the tenants have paid \$2,900.00 per month since that period, they are entitled to a return of 1,600.00 in rent. The tenants will deduct this sum from the \$2,500.00 which is due on August 1 and will pay \$900.00 in rent for that month which will fully compensate the tenants for the months of April - July and will fully satisfy the rent owing for August. In September 2015 the tenants will pay \$2,500.00 and will continue paying that monthly amount subject to the further conditions below.
- The landlords will return to the tenants the postdated cheques, each for \$2,900.00, which the tenants provided to the landlords upon signing the most recent tenancy agreement. The tenants will provide the landlords with cheques reflecting the new rental amount.
- The landlords will not perform the repairs requested on the tenants' list of repairs dated May 10, 2015.

- The landlords will perform emergency repairs as defined by section 33 of the *Residential Tenancy Act* as required.
- If during the remainder of the current tenancy, which expires on March 31, 2016, the tenants request of the landlords non-emergency repairs, the rent will revert back to its original \$2,900.00 and the tenants will be free to pursue from the Residential Tenancy Branch an order compelling the landlord to perform repairs (which may include the repairs outlined in the May 10, 2015 request) and monetary compensation. The tenants will also at that time be required to repay to the landlord the \$400.00 monthly rent abatement for the entire period they have enjoyed that abatement, which began on April 1, 2015.

I note that at the hearing, the tenants offered to give the landlords a cheque for the \$900.00 in rent owing for August 2015 but the landlords asked that the tenants arrange to pay the landlords through the landlords' counsel at some point during the week of August 2. Because the landlords refused payment on August 1, the tenants' late payment for August cannot be considered a late payment for purposes of ending the tenancy for cause.

Conclusion

The tenants' allegation of an illegal rent increase is dismissed as unfounded. The remaining claims have been settled pursuant to the terms outlined above.

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: July 31, 2015

Residential Tenancy Branch

