



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, MNDC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlords to comply with the Act, regulations, or tenancy agreement, for an order allowing a reduction in rent, and a monetary order for money owed or compensation for damage or loss.

The tenant, his advocate, and the landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlords to comply with the Act, an order granting a reduction in monthly rent, and an order for monetary compensation?

Background and Evidence

The undisputed evidence shows that this tenancy began approximately 24 years ago and that the landlords here were not the original landlords, with no written tenancy agreement being supplied from the inception of the tenancy. I also heard evidence that the rental unit is located in a mainly commercial building, with the tenant's rental unit being the only residential space.

In support of his application, the tenant, through his advocate, submitted that when the current landlords took ownership of the building in 2011, the parties signed a written tenancy agreement, the terms for which showed a one year, fixed term tenancy beginning on June 1, 2011, through May 31, 2012, for a monthly rent of \$700.00. On that tenancy agreement, the tenancy converted to a month-to-month after the fixed term. The monthly rent was increased to \$725.00 on March 31, 2013, through a notice of rent increase issued to the tenant.

Subsequently, the parties executed a new written tenancy agreement, showing an 18 month, fixed term tenancy, beginning on August 1, 2014, for a monthly rent of \$800.00. Under the terms of this tenancy agreement, the tenancy ended and the tenant was required to vacate the rental unit by March 31, 2016.

The tenant submitted further that in approximately May 2014, the landlords approached him and informed the tenant that they would need to convert one room in the rental unit to office space, which they did when signing the new tenancy agreement in August 2014. The landlords sealed off the door connecting that room to the rest of the rental unit, as well as the front hallway, according to the tenant. The tenant submitted that the converted room was meant to be a laundry room; however, the tenant used this room as his bedroom as he likes to sleep in a room with no windows and the hallway was used as storage, according to the tenant.

The tenant's advocate submitted that the tenant did not understand that he did not have to sign a new tenancy agreement, as the tenancy would carry on as a month-to-month tenancy. The tenant's advocate submitted that the tenancy should revert to the first written tenancy agreement of the parties, reflecting a month-to-month tenancy instead of the fixed term agreement requiring the tenant to vacate by the end of the fixed term. As a legal argument, the tenant's advocate submitted that the second written tenancy agreement was unconscionable, and therefore unenforceable, as there was inequality of the parties and substantial unfairness, as the tenant was extremely uncomfortable with the new landlords and the rent was increased from \$725.00 to \$800.00 per month, in violation of the rent increase allowed by the Residential Tenancy Branch ("RTB") annually.

The tenant's advocate argued that there was no benefit to the tenant derived from the new tenancy agreement and that the tenant did not explore his legal rights prior to signing the second written tenancy agreement on August 1, 2014, until June 2015.

In addition to ordering that the tenancy revert to a month-to-month tenancy, and voiding the second fixed term written tenancy agreement requiring the tenant to vacate on March 31, 2016, the tenant is also requesting monetary compensation of \$2011.75 and reduced rent for a reduction in value of the tenancy due to the reduced space.

The tenant's advocate submitted further that the tenant's monthly rent should additionally be restored to \$725.00 per month, as per the last rent increase, and that the

tenancy was devalued by 11% per month. In explanation, the tenant's advocate submitted that when the landlords boarded the laundry room and hallway to which the tenant previously had access, he lost approximately 99 square feet, or 11% of his total former space.

The tenant's monetary claim is comprised of \$975.00, for overpayment of rent of \$75.00 per month from August 2014 through August 2015 and \$1036.75 for a reduction in value of the tenancy from August 2014 through August 2015.

The tenant's relevant documentary evidence included, but was not limited to, a written submission of claim, a statutory declaration signed by the tenant, the 2 written tenancy agreements, photographs of the rental unit depicting the lost square footage, and legal authority.

Landlords' response-

The landlords submitted that when they bought the property for a commercial use in June 2011, they "inherited" the tenant. The landlords submitted that they required the tenant's space for a commercial use and notified the tenant that as a result, they would be issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property ("Notice").

Instead of being issued the Notice, the tenant wanted some sense of security, leading the parties to negotiate terms of continuing the tenancy, according to the landlord. The landlords submitted that they wanted more immediate vacant possession of the rental unit and suggested a fixed term of 1 year, which the tenant declined as he wanted a 3 year fixed term tenancy agreement. According to the landlord, the parties compromised and agreed on an 18 month fixed term agreement.

The landlords submitted further that it was the tenant who suggested a monthly rent of \$800.00, after they asked the tenant what he considered a fair rent. The landlords submitted that the monthly rent of \$800.00 was a very fair price to the tenant, considering the location and rents of similar or lesser sized units in the same area.

The landlords submitted further that the tenant agreed to give up part of his space so that he would not lose his living space altogether.

The landlord denied that the tenant was pressured or felt threatened in signing the second tenancy agreement and that the terms were negotiated between the parties.

The landlord's evidence included photographs of the door to the rental unit, the 2 written tenancy agreements, a statement of composition of the property showing 3 businesses and the tenant as occupants, and rental listings in the geographic area.

Analysis

Tenant's request that the tenancy continue on a month-to-month basis; voiding the second written tenancy agreement-

The tenant claims that the second written tenancy agreement with a definite fixed term ending the tenancy was void due to its unconscionable terms.

The three basic tenets used to determine if a contract has been entered into include: capacity, consensus and consideration. In this case, neither party presented evidence questioning the other party's capacity.

As to consensus, I find the consensus is found in written form in this case, as the parties both signed the written tenancy agreement of August 1, 2014.

As to consideration, in this case, I find that consideration can be found in the landlord offering a rental unit and the tenant accepting the tenancy under those terms.

Due to this, I find the parties entered into a valid contract.

In the case before me, the tenant, as applicant/claimant, had the burden of proof to substantiate that he was coerced, intimidated, or threatened in signing the new tenancy agreement and that as a result, the terms were unconscionable. Burden of proof is based on the balance of probabilities which means one version is more likely than another version of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After considering the evidence, I find the tenant submitted insufficient evidence to prove that he was under duress or felt threatened in signing the August 1, 2014 tenancy agreement, leading to its unconscionability. I found it just as likely as not that the tenant negotiated the terms of continuing the tenancy to his benefit when faced with receiving a 2 Month Notice, as was the landlord's right to do so, and he lived under those terms for nearly a year prior to seeking an avoidance of the written tenancy agreement.

I do not accept the tenant's position that the terms were unjust or one-sided, as the landlords postponed their right to gain vacant possession much earlier than March 31, 2016, to convert the rental unit to a non-residential use, most likely at higher rents.

Due to the above, I decline to order that the tenancy revert to the terms of the first written tenancy agreement, as I find that the second written tenancy agreement for a fixed term ending March 31, 2016, is valid and enforceable.

Additionally, as I have found that the second written tenancy agreement is valid and enforceable, I dismiss the tenant's claim for reimbursement of overpayment of rent, as

the monthly rent he is obligated to pay under that tenancy agreement is \$800.00 per month.

Loss of use-

In considering this claim of the tenant, the two written tenancy agreements describe the rental unit in the same manner; there is no different description as to size and layout.

As such, I find it reasonable that the tenant's rental unit was of the same size and composition from one tenancy to the second tenancy agreement, and consequently, I find the tenant has suffered a loss of use of a portion of the rental unit when the landlord boarded the laundry room and hallway previously accessed and used by the tenant.

Section 27 of the *Act* stipulates that a landlord may not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit has living accommodation. The section does allow a termination or restriction of service or facility if it is not essential by giving the tenant 30 days' notice and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy.

In the case before me, I do not find that the loss of the laundry room and hallway is essential to the tenant's use of his 2 bedroom rental unit; however, I accept the tenant's undisputed evidence that he lost approximately 11% of space in his rental unit and I find he is entitled to a reduction in the value of the tenancy, in this case \$88.00 per month, or 11% of \$800.00.

As such, I find the tenant is entitled to compensation of \$1232.00, comprised of a reduction in value of \$88.00 per month from August 2014 through September 2015, (\$88.00 x 14 months) as the parties will not have received this Decision prior to the September payment of rent.

Additionally, pursuant to section 65(1)(f), I order that the tenant's monthly rent be reduced by \$88.00 for a reduction in the value of the ongoing tenancy, and that beginning with the October 2015 rent payment, the tenant's monthly rent obligation is \$712.00.

In satisfaction of the tenant's monetary award of \$1232.00, I direct the tenant to withhold his new monthly rent of \$712.00 for October 2015, leaving a balance of his monetary award of \$520.00. I further direct the tenant to withhold the amount of \$520.00 from the November 2015, rent payment of \$712.00, leaving a monthly rent obligation for November 2015, of \$192.00, in full satisfaction of his monetary award. The tenant will resume full payment of his new rent for December 2015, or \$712.00.

Conclusion

The portion of the tenant's application seeking to reinstate the terms of this tenancy as reflected in the first written tenancy agreement signed by the parties is dismissed.

The portion of the tenant's application seeking monetary compensation for a reduction in the value of the tenancy and a reduction in rent is granted. The tenant was given instructions to satisfy his monetary award.

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 8, 2015

Residential Tenancy Branch

