



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNC, DRI, MNDC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; to set aside a Notice to End Tenancy for Cause; to dispute a rent increase; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing this Application for Dispute Resolution.

The application was originally heard on September 1, 2015. The Landlord failed to attend the hearing and was subsequently granted review consideration pursuant to section 79 of the *Residential Tenancy Act* as the Landlord was unable to attend the hearing for circumstances that were beyond her control. The application was then re-set for a new hearing before me on November 25, 2015.

Both parties attended the hearing on November 25, 2015. The Landlord was assisted by her brother C.T., who also acted as her translator.

As noted in the September 4, 2015 decision arising from the September 1, 2015 hearing, at the outset of that hearing the Tenants withdrew the application to set aside a Notice to End Tenancy for Unpaid Rent and to set aside a Notice to End Tenancy for Cause.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As noted in the within hearing, pursuant to section 64(2) of the *Residential Tenancy Act* I am not bound to follow the decision made September 4, 2015. This is a new hearing.

Issues to be Decided

1. Are the Tenants entitled to recover \$1,200.00, representing the \$100.00 additional rent they paid pursuant to a rent increase imposed on September 1, 2014?
2. Should the Tenants recover the filing fee?

Background and Evidence

D.T. testified on behalf of the Tenants and stated that the tenancy began on July 1, 2013. She advised that she did not sign a tenancy agreement, but agreed to pay monthly rent of \$500.00 which amount included her utilities. D.T. stated that the rental unit was a small one bedroom basement suite in the Landlord's home.

She further stated that when her boyfriend, I.K., moved into the rental unit with her on September 1, 2014 the Landlord asked her to pay an additional \$100.00 per month. She confirmed that she paid this amount from September 1, 2014 to August 31, 2015 and further confirmed that at no time did she advise the Landlord that she did not agree to this request. D.T. testified that she moved out on September 1, 2015.

The Landlord testified that at the time the Tenant moved into the rental unit she informed the Landlord that her boyfriend, I.K. would be moving in with her approximately 3-4 months later The Landlord further testified that the parties agreed the Tenant could have I.K. move in with her and that the Tenant would pay \$500.00 per month until he moved in at which time the rent would be raised to \$600.00. The Landlord testified that approximately 7-8 months later I.K. moved in and the rent increased to \$600.00 as agreed.

The Landlord confirmed that the Tenant paid a security deposit of \$250.00. He further confirmed that he did not ask for an additional deposit when I.K. moved in.

The Landlord further testified that at no time did the Tenant state that she was oppose to the \$600.00 rental amount as she had agreed to this when the tenancy began.

The Landlord testified that the Tenant moved out on either September 4 or 5, 2015. The Landlord further testified that they only became aware that the Tenant had vacated the rental unit when they found the rental unit cleared of the Tenant's belongings and

the Tenant's key left in the rental unit. The Landlord stated that the Tenant also left the rental unit damaged.

The Landlord confirmed that they had not returned the security deposit as the Tenant failed to provide a forwarding address. The Landlord also testified that the Tenant stopped paying rent in July, such that at the time of the hearing the Tenant owed the Landlord the sum of \$1,800.00 representing unpaid rent for July 2015, August 2015 and September 2015 rent.

When provided an opportunity to reply, the Tenant stated that it was I.K. who informed her that the \$100.00 rent increase may not be legal. She further testified that she "did not have any issue with the increase", and, "did not raise it with the Landlord as she did not want to cause any 'waves.'" D.T. also stated that her rent was in fact paid for July and August 2015 but conceded that she had not paid for September 2015.

At the conclusion of the hearing, the Tenant provided her forwarding address.

Analysis

Section 41 of the *Act* requires landlords to comply with the Act when imposing rent increases. Section 40 of the *Act* stipulates that the term "rent increase" does not include an increase in rent that is for one or more additional occupants if that increase is authorized in the tenancy agreement.

Section 1 of the *Residential Tenancy Act* provides as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

As such, pursuant to section 1, a tenancy agreement includes an oral tenancy agreement.

In consideration of the evidence filed, the testimony of the parties, and on a balance of probabilities, I find that the parties entered into an oral tenancy agreement which contemplated the Tenant's boyfriend moving into the rental unit and which further provided that once I.K. moved into the rental unit that rent would increase by \$100.00.

Accordingly, I find the \$100.00 additional charge for I.K. was not a rent increase, but an increase in rent that is for one or more additional occupants as provided for in section 40 of the *Act*.

I prefer the Landlord's evidence over that of the Tenant's with respect to the terms of the oral agreement. I find as a fact that the Tenant communicated her agreement to the Landlord at the time the tenancy began and when the parties discussed I.K. moving into the rental. I accept the Landlord's evidence that the Tenant agreed to pay \$100.00 more when I.K. moved in. I further note that the parties agree that no time during the tenancy did the Tenant communicate to the Landlord that she believed the \$100.00 payment to be unreasonable.

It was reasonable for the Landlord to proceed on the implied agreement and/or assumption that the Tenant agreed to the \$100.00 increase from September 1, 2014 to August 31, 2015. Had the Tenant communicated that she did not agree to the requested increase the Landlord might have chosen not to rent to the Tenant, or requested a higher rent at the beginning. Further, as the rental payment includes utilities it is reasonable for the Landlord to expect more from the Tenant when another adult moved into the rental unit.

I also find the Tenant is prohibited from disputing this historic increase on the basis of the legal principle of *estoppel by convention*.

In a decision of the Supreme Court of Canada, *Ryan v. Moore*, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

59 After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.

- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

- (1) The Tenant, having agreed to a future increase of \$100.00 when I.K. moved into the rental unit, paying this sum from September 1, 2014 to August 31, 2015, and failing to raise any concerns with the increase or dispute the amounts, created a mutual assumption upon which the Landlord relied.
- (2) The Landlord relied on this shared assumption, and agreed to rent the rental unit to the Tenant.
- (3) It would be unjust and unfair to allow the Tenants to resile or depart from the common assumption that the rent would increase by \$100.00 when I.K. moved into the rental unit, as the Landlord, having relied on the Tenant's agreement did not pursue a higher rent at the beginning of the tenancy, or make alternate arrangements with respect to the payment of utilities.

Applying the principle of estoppel by convention, I find that the Tenant is estopped from claiming compensation for \$100.00 per month rent increase from September 2014 to August 31, 2015. The Tenant's application is dismissed in its entirety.

The Landlord was advised that they could not request monetary compensation through the Tenant's application and that should the Landlord wish to obtain a Monetary Order, they are required to make their own Application for Dispute Resolution.

The parties are also reminded that they must comply with section 38 of the *Residential Tenancy Act*. As the Tenant provided the Landlord with a forwarding address during the hearing, I direct the Landlord to either repay the security deposit to the Tenant or make an Application to retain it and in any case must do so **within 15 days of receipt of this my Decision.**

Conclusion

The parties entered into an oral agreement which included a term that the rent would be increased by \$100.00 per month when the Tenant's boyfriend, I.K., moved into the rental unit. This rental increase is permitted by section 40 of the *Residential Tenancy Act*.

As well, the Tenant is estopped from claiming compensation for the additional rent paid for the time period September 1, 2014 to August 31, 2015.

The Tenant's application is dismissed in its entirety. The Decision and Order made on September 4, 2015 are set aside.

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: November 25, 2015

Residential Tenancy Branch

