



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chartell Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 43 of the *Residential Tenancy Act* (the “Act”) disputing a rent increase. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Have the Tenant's received a rent increase?

Background and Evidence

The following are undisputed facts: The tenancy started on October 1, 2015 on a fixed term to end September 30, 2015. On September 15, 2016 the Landlord sent the Tenant a letter offering to extend the lease to September 30, 2016 and keeping all the remaining terms unchanged except for the rental amount. The letter indicates that the rent will be increased to \$2,800.00. The Tenants have not paid the amount indicated in the letter, have not signed any agreement to the letter and have paid \$2,765.50 to the Landlord for October and November 2015 to reflect a monthly increase of 2.5%. The Tenants have not moved out of the unit and the Landlord has not served the Tenants with any notice to end the tenancy. The Landlord wants the Tenants to continue the tenancy but wants a rental increase over the allowed amount.

Analysis

Section 42 of the Act provides that any notice of rent increase must be in the approved form. As the Landlord did not provide the Tenants with any notice of rent increase in the approved form I find that the Tenants have not been given a rental increase.

Although the tenancy is a fixed term tenancy requiring the Tenant to move out of the unit at the end of the term, the Landlord did not seek to end the tenancy and the evidence supports that the Landlord sought to continue the tenancy to another fixed term date with a rent increase. The evidence supports that the Tenants did not agree to continue the tenancy on these terms. As the Landlord did not have any intention to enforce the end of the tenancy and did nothing to enforce the required move-out I find that the tenancy did continue and as there was no agreement on another fixed term the tenancy became a month to month tenancy at the end of the fixed term.

Section 43 of the Act provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. Although the Tenants did not claim any compensation the Tenants are at liberty to recover the overpayment in rents paid for October and November 2015. The Landlord is at liberty to serve the Tenants with a notice of rent increase in the approved form.

Conclusion

The Tenants have not received a rent increase as provided under the Act.

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 26, 2015

Residential Tenancy Branch

