



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing dealt with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant originally filed this application indicating he was seeking compensation of \$9,463.47 and Monetary Order worksheets accompanied the application. The tenant subsequently filed an amended application indicating he was seeking monetary compensation of \$10,108.42 and Monetary Order worksheets accompanied the amended application. I confirmed that the original application and the amended application, along with their respective Monetary Order worksheets, had been served upon the landlords. I noted that the amounts appearing on the Monetary Order worksheets that accompany the amended application pertained to claims to recover overpaid rent for several years but that the sums did not total to \$10,108.42. The tenant explained that he forgot to include a claim for harassment on the Monetary Order worksheets that accompanied the amended application. The landlords stated that they understood the nature of this dispute concerned the tenant's claims that rent had been overpaid and they were prepared to respond to those claims.

As the parties were informed during the hearing, an applicant bears the burden to clearly outline their claims against the other party. I found the tenant's claims that rent has been overpaid and the amounts he seeks to recover to be clearly identified but the tenant's claim for \$2,500.00 for harassment was not clear since it had been omitted from the Monetary Order worksheets filed with the amended application. Accordingly, I limited the tenant's claims to those pertaining to the alleged rent overpayment and the

tenant was informed that he remains at liberty to file another application if he intends to pursue a claim of harassment against the landlords.

Issue(s) to be Decided

Have the landlords collected unlawful rent increases from the tenant?

Background and Evidence

On August 27, 2004 the landlord and tenant executed a written agreement for a month to month tenancy that required the tenant to pay rent of \$500.00 per month and a security deposit of \$250.00 was paid.

A subsequent tenancy agreement was executed by the tenant and the landlord for a month to month tenancy that commenced September 1, 2006 and required the tenant to pay rent of \$600.00 per month.

A third tenancy agreement was executed by the tenant and the landlord on February 24, 2011 for a two year fixed term tenancy set to commence July 1, 2011 that required the tenant to pay rent of \$800.00 per month ("the 2011 agreement"). Upon expiration of the fixed term the tenancy continued on a month to month basis. The tenant continues to reside in the rental unit and has been paying rent of \$800.00 since July 1, 2011.

The tenant is of the position that the landlords unlawfully increased the rent starting July 1, 2011 and the tenant seeks to recover the overpayment paid since that date. The tenant calculated the overpayments by applying the annual rent increase provided under the Residential Tenancy Regulations to the base amount of \$600.00 and then recalculating the maximum amount of rent payable every year assuming the annual rent increase provision had been applied.

The landlord was of the position that the parties mutually agreed to enter into the tenancy agreement that was executed on February 24, 2011 and the terms agreed upon are legal and binding. The landlords have only collected rent that has been stipulated in the tenancy agreement and the landlord has not collected an unlawful rent increase.

The tenant submitted that in February 2011 he was "persuaded" by the landlord to enter into a new tenancy agreement. The tenant acknowledges that at the time he thought it would be a good idea to contact the Residential Tenancy Branch but he decided to sign the tenancy agreement and told himself that he would check in to its enforceability at a

later date. For some reason the tenant waited several years before contacting the Residential Tenancy Branch and when he did he learned of the maximum annual rent increase percentages.

As to the tenant's allegation that the landlord "persuaded" him to enter into a new tenancy agreement the tenant explained that: (1) the landlord told him that he knew the tenancy laws and (2) the landlords offered to the tenant that he could keep their dog with him 24 hours instead of the 16 hours the landlords' dog had been permitted to visit with the tenant.

The landlord acknowledged that he has other rental properties and denied there was any coercion. Rather, the landlord recalled that the landlord and tenant were on good and amicable terms in 2011 and the tenant signed the 2011 tenancy agreement without hesitation. The tenant denied that the parties had an amicable relationship.

The landlords also denied that they offered to give the tenant their family dog.

Analysis

Upon consideration of the evidence provided to me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent that is due under the tenancy agreement. Sections 40 through 43 of the Act provide for the way rent must be increased and there are limitations on the amount of a rent increase.

The tenant is of the position that rent had been increased starting July 1, 2011 and that the rent increase exceeds the limitations provided under the Act, however, it is undeniable that the tenant has been paying the amount of rent stipulated in the written tenancy agreement he signed with the landlord in 2011.

Parties have freedom to renegotiate their tenancy agreements and enter into entirely new agreements by mutual consent. When parties replace a former agreement with an entirely new agreement the new agreement replaces the former agreement and brings the former agreement to an end. In this case, I find the parties did just that – they entered into an entirely new tenancy agreement on February 24, 2011 with the effect that the former tenancy agreement would end and the new agreement would take effect as of July 1, 2011.

Although the tenant had wanted to contact the Residential Tenancy Branch before signing the 2011 tenancy agreement he chose not to and signed the 2011 agreement. Ultimately, it is upon each party to an agreement to determine and understand their respective rights and obligations and act in accordance with their own best interest.

In order to consider the tenant's position that he has been paying a rent increase I would have to find the 2011 tenancy agreement is unenforceable. I find the tenant's allegations that he was "persuaded" to sign the 2011 agreement is unsubstantiated and in any event "persuasion" is not a basis to set aside the 2011 agreement. I further find there to insufficient evidence to establish that the 2011 agreement was entered into under duress or any other legal basis for me to set aside the 2011 tenancy agreement. Therefore, I find the 2011 tenancy agreement is valid and is legally binding upon both parties.

In light of the above, I find the tenant has been paying rent in accordance with the tenancy agreement and the tenant has not paid an unlawful rent increase. Accordingly, I deny his request to recover a portion of the rent he has paid since 2011 and I find it unnecessary to issue orders for compliance to the landlords. Therefore, I dismiss his application in its entirety.

Conclusion

The tenant's application has been dismissed.

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: March 18, 2016

Residential Tenancy Branch