Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a rent increase. 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.

The landlord questioned whether the tenants had correctly identified the dispute in filing their Application since they had ticked the box that corresponds to disputing an "additional rent increase" and the landlord is collecting the amount of rent stipulated in the written tenancy agreement. It was apparent to me from the written submissions and evidence received from both parties that the issue under dispute is the amount of rent payable by the tenants and whether the tenancy agreement was amended. Accordingly, I find it reasonable that the landlord's requests to collect the amount of rent provided on the written tenancy agreement would appear to be a rent increase to the tenants given their position that the rent payable was reduced by mutual agreement. It was also apparent to me by the landlord's written submissions received prior to the hearing that the landlord is fully aware of the nature of this dispute and was prepared to respond to the matter. Therefore, I found there to be no prejudice to the landlord in hearing this matter despite any error in the dispute code indicated on the application. If anything, the more appropriate dispute code for this application may be the dispute code associated to seeking an order for compliance. Therefore, I amended the tenant's application to indicate both dispute codes.

Issue(s) to be Decided

Was the tenancy agreement amended? If so what are the terms as amendment?

Background and Evidence

The tenants and the former owner of the property executed a written tenancy agreement on May 14, 2008 requiring the tenants to pay rent of $795.00 on the first day of every month on a month to month basis. The tenants paid a security deposit of $397.50. The rental unit is a lower suite and the upper suite of the house is either vacant or tenanted from time to time.

It was undisputed that since 2009 the tenants were been paying the former owner rent in the amount of $700.00 per month.

The tenants submitted that when the tenancy started they were responsible for maintaining the back yard. However, the upper unit remained vacant approximately 60% of the time and the former owner approached the tenants about performing yard work duties for the entire property in exchange for a rent reduction. The tenants agreed to the former owner's proposal and since 2009 the tenants have been paying $700.00 per month in rent and have been responsible for maintaining the front and back yards. The tenants also stated that the former owner was motivated to keep them as tenants as the upper unit was hard to rent and on three occasions they assisted the former owner in securing tenants for the upper unit. The agreement between the tenants and the former owner was not recorded in writing.

The property was sold to the current owners in November 2015 and the current owners enlisted the services of the landlord, a property management company, to manage the rental unit and the upper suite of the house. The property manager was provided a copy of the written tenancy agreement executed by the tenants and former owner.

Starting December 2015 the tenants began paying rent to the current landlord. The tenants paid $700.00 for December 2015 and the parties had a conversation where the tenants asserted that their rent had been renegotiated with the former owner to $700.00 per month. The landlord consulted with the new owners and responded to the tenants in writing on December 11, 2015. By way of that letter the landlord required the tenants to pay rent of $795.00 starting December 1, 2015 based on the written tenancy agreement and because the agreement for reduced rent was never put in writing and "while we understand that you had passed this information along to the previous owner's listing agent, it was never provided to the new owner's real estate agent or the new owner. The owner purchased the house based on the rental income which is reflected in your least agreement."

The tenants paid the difference of $95.00 for December 2015 and paid $795.00 starting January 2016 but filed this Application for Dispute Resolution in early January 2016.

The tenancy agreement does not require the tenants to perform management services for the owner or otherwise manage the tenancy of the upper unit. The addendum to the tenancy agreement does provide for yard work. Under term 5 of the addendum it states, in part:: “The Tenant agrees to mow and water the lawn and to keep the lawn, flowerbeds and shrubbery in good order and condition, and to keep the sidewalk surrounding the premises free and clear of obstructions….” I note that the term does not specifically address the fact that this property has multiple units and does designate certain portions of the yard for the lower unit or the upper unit; however, both parties appearing before me provided consistent testimony that the front and back yards are clearly distinguishable and that the backyard is for the exclusive use of the lower tenants and the front yard is for the use of the upper unit occupants.

The landlord stated that after the property was transferred to the current owners’ the management of the property became the responsibility of the property manager and the tenants have no obligation with respect to managing the property or the upper unit and the tenants are not required to perform any yard work outside of the area that is for their exclusive use. The landlord stated that the front yard will be maintained by the upper tenants when the upper unit is tenanted or by the property manager if the upper unit is vacant.

The tenants requested the landlord to clarify their obligations with respect to yard maintenance to which the landlord stated the tenants are expected to mow, water, rake, and perform light weeding in the back yard.

The tenants remained of the position that increasing the rent from $700.00 to $795.00 is not fair without any advance notice. Further, they are of the position that the real estate agent was informed of the reduced rent agreement. The property manager stated that the property manager was unaware of any disclosure to the current owner’s or the current owner’s realtor.

The tenants provided some rent receipts to demonstrate they had been paying $700.00 per month and a letter from the previous owner of the property in support of their position. The letter from the former owner states, in part:

> “Within the first year, we verbally agreed to reduce rent in exchange for yard maintenance. Around 2009, we verbally agreed to reduce the rent further to $700.00 per month. We did not sign a written agreement.”

I note that the former owner makes no mention as to whether he disclosed the agreement entered into verbally with the tenants to the current owner or the realtors involved in the sale of the property.

Analysis

Section 44 of the Act provides for ways a tenancy ends. Selling a tenanted property does not in itself end a tenancy. Further, the Act specifically provides that a security deposit runs with the land. Accordingly, when a tenanted property is sold to new owners the tenancy agreement in place at that time follows and remains in effect.

Section 14 of the Act provides that parties may change the terms of tenancy by mutual agreement, so long as the change is not a standard term, a rent increase or a withdrawal of a service or facility. Section 14 does not specifically require that the mutual agreement be in writing to be effective. In publications produced by the Residential Tenancy Branch parties are encouraged to record a change to a tenancy agreement in writing. The most obvious reason for encouraging this is to avoid disputes and so that there is a record of changes to a tenancy agreement. However, where parties to a contract are in agreement that the term(s) changed there is no need to interfere with that agreement unless the change violates the Act in which case the change would be unenforceable. Therefore, I find that it is possible to orally amend a written tenancy agreement, in certain circumstances, by mutual agreement of the parties to the tenancy agreement.

In this case, the property was tenanted at the time the property was sold to the current owners. Accordingly, the tenancy agreement between the tenants and the former owner followed and the current owners are bound by the terms already agreed upon. The issues in this case are: what are the terms of tenancy with respect to payment of rent and the yard maintenance obligations of the tenants.

I have been unopposed evidence that the tenants and the former owner agreed to reduce the rent to $700.00 per month in exchange for performing yard work in the front and back yards of the property. I was also provided unopposed evidence that this change took place several years prior to the sale of the property, in 2009, and since then the tenants performed the yard maintenance duties for the entire property. The landlord made no submissions that landlord or the current owners attempted to contact the former owner to confirm the tenants' position that rent had been reduced. Rather, the landlord appears to rely upon the position that the tenancy agreement was not amended in writing and that the changes to the tenancy agreement were not

disclosed to the current owners or their realtor. However, as provided above, I find that a written tenancy agreement may be amended orally if the parties to the agreement are in mutual agreement to change the terms of tenancy. Further, any failure to disclose oral amendments to the tenancy agreement to the prospective purchasers of the property is not a basis to set aside the amended terms as to do so would penalize the tenants who were not involved in the sale of the property. While I appreciate that the value of an income property is affected by the rent that the property garners, I am of the view that any failure to disclose the terms of tenancy would be a dispute between those involved in the purchase and sale of the property.

I have considered whether the amended terms, in particular, the tenants' obligation to perform yard work in the front and back yards are enforceable. Section 6 provides that a term of a tenancy agreement that violations the Act or is unconscionable is not enforceable. As provided under Residential Tenancy Policy Guideline 1 tenants of a multiple unit property are generally held responsible for maintaining the yard where they have exclusive use and are not required to maintain common property or property for the use of other tenants. Under the amended agreement the tenants are required to perform yard work in parts of the property that is not for their exclusive use and is intended for use by other tenants. Although this arrangement places a greater burden on the tenants I am satisfied that the additional burden has been sufficiently offset by a distinguishable reduction in rent payable. Therefore, I find the amended terms are not unconscionable and I find they are enforceable.

In light of the above, I accept that the terms of tenancy were changed in 2009 by way of an oral agreement between the tenants and owner of the property at that time and that the amended terms are enforceable. For certainty for both parties, I find that the amended terms of tenancy require that:

1. The tenants pay rent in the amount of $700.00 every month; and,
2. The tenants are responsible for performing yard work in the front and back yards of the property.

Accordingly, I order that the above terms remain in effect until such time: the tenancy ends; the parties enter into a new tenancy; or the parties amend the existing agreement in a manner that complies with the Act; whichever occurs first.

Having heard unopposed evidence that the tenants have paid rent in the amount of $795.00 since this dispute arose in December 2015 I authorize the tenants to recover the rent they have paid in excess of $700.00 per month, starting in December 2015, by deducting the amount of the overpayments from rent otherwise payable to the landlord.

I further award and authorize the tenants to recover the $50.00 filing fee they paid for this application by deducting $50.00 from a subsequent month's rent.

Conclusion

The tenants were successful in their application and I have made findings as to the amended terms of tenancy.

The tenants have been authorized to recover any rent paid in excess of $700.00 per month starting December 2015 by deducting the amount of the overpayments from rent otherwise payable. The tenants are also awarded and authorized to deduct a further $50.00 for recovery of the filing fee paid for this application.

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