



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

The tenant applies for an order that the landlord comply with the law or the tenancy agreement, arguing that the landlord had imposed a rent increase by a method and in an amount not permitted by the *Residential Tenancy Act* (the “RTA”).

Both parties attended the hearing by their respective agents and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord has improperly raised the tenant’s rent?

Background and Evidence

The rental unit is a one bedroom apartment in a 90 unit apartment building.

The tenant moved in January 1, 2014 pursuant to a one year fixed term tenancy agreement. The agreement was renewed or replaced in 2015 with another one year fixed term agreement.

Neither agreement required the tenant to vacate the premises at the end of the fixed term.

Both tenancy agreements fixed the rent at \$750.00 per month. However, concurrent with each agreement, by a separate document the landlord offered the tenant a “rent incentive.”

The “Rental Incentive Agreement” provided that if the tenant entered into a twelve month term he would receive a “monthly rental concession” of \$62.00.

The agreement also provided that the tenant must be on an “Auto Debit” to receive the incentive and if the tenant cancelled the auto debit during the term then the incentive would also be cancelled.

The agreement also provided that if the tenant “breaks the lease within the specified time” then “any and all incentives . . . will be immediately due and payable” to the landlord.

Thus, for two years the tenant paid \$688.00 per month. Her rent is paid directly to the landlord from the provincial government and the landlord has accepted this form of payment as “auto debit.”

At the end of October 2015 the landlord wrote to the tenant stating that her fixed term would be ending December 31, 2015 and that she had the option to re-sign the lease or continue on under a month to month tenancy. The letter indicated that “if your building is currently offering incentives you may be eligible for another 12 month lease term, allowing you to receive the incentive being offered.”

It is agreed that the tenant’s building was no longer offering the rent incentive though the tenant was prepared to sign another twelve month tenancy agreement..

The tenant continued in occupation of the rental unit after December 31, 2015 and the landlord, relying on the previous fixed term tenancy agreement, demanded the full rent of \$750.00 per month, starting January 1, 2016, the first month after the end of the tenant’s fixed term tenancy.

The tenant’s representative says the incentive was withdrawn because the apartment building was full, implying that the landlord no longer needed to “drop” the rent to attract new tenants. He argues that the landlord is bypassing or avoiding the requirements imposed by the *RTA* and its regulation requiring three months’ notice of a rent increase and limiting any increase to a percentage set by regulation (2.9% at the relevant time he says).

While the landlord's representative did not dispute the assertion about the building now being full, she stated that the incentive was extended to the tenant in consideration of the fact that the tenant was signing a one year lease. She also noted that under the incentive agreement, if the tenant cancelled the auto debit rent payment method, the incentive would be withdrawn and that all incentive reductions granted during the term up to that time would have to be repaid.

Analysis

The "Rental Incentive Agreement" is not limited in its scope or duration. It is not stated to be a "one time" offer. It says that upon signing a twelve month lease agreement the tenant will receive a monthly rental concession in the amount of \$62.00. It was presented to the tenant at the same time she signed her standard tenancy agreement.

The "Rental Incentive Agreement" is an agreement determining the rent the tenant is to pay, notwithstanding the amount stated in the standard tenancy agreement. It must be read and considered when determining what the agreement between the parties is; what the lawful rent is. It thereby forms a part of the "tenancy agreement" between the parties and is a term of the tenant's tenancy agreement

Section 44(3) of the *RTA* provide:

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As a result, the tenant was entitled to rely on the term of her tenancy agreement that if she signed a twelve month lease agreement she would receive a rental concession of \$62.00 per month.

I find that she was ready, willing and able to sign a twelve month lease. Given the unrestricted wording of the Rental Incentive Agreement, It was incumbent on the landlord to offer one.

Conclusion

So long as the tenant stands ready to sign a new twelve month agreement, she is entitled to the \$62.00 per month concession, whether it is a reduction from her current rent or from rent after a lawful rent increase imposed by the landlord.

She has paid an extra \$62.00 for the months of January and February 2016. I authorize her to deduct the amount of \$122.00 from her next rent due in full satisfaction of this overpayment.

There is no claim for recovery of any filing fee.

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: April 06, 2016

Residential Tenancy Branch

