



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, O

Introduction

This is an application brought by the tenant(s) disputing a rent increase, and requesting a finding on whether landlords are bound by an offer that was made and accepted before the time limit for the offer expired.

Some documentary evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The issues are:

- Whether landlords are bound by an offer that was made and accepted before the time limit for the offer expired.
- Whether the landlords could legally withdraw their offer before it was accepted and before the time limit for acceptance had expired.
- Whether, if the lease is to be renewed, the landlords have the right to increase the rent by 6%.

Background and Evidence

The parties agree that this tenancy began in April of 2013 and that the present monthly rent is \$4500.00, due on the first of each month.

The parties also agree that parties presently have a fixed term tenancy with an expiry date of April 30, 2016, that requires the tenant to vacate at the end of the tenancy if a new lease is not signed.

The tenant testified that he received an offer from the landlords to renew the lease for another one-year term, ending April 30, 2017, that had a time limit for acceptance of 29 February 2016.

The tenant further testified that on February 19, 2016 the landlords withdrew their offer to lease the property to him, even though they had told him he had until February 29, 2016 to accept the offer, and he believes that they could not withdraw the offer until after February 29, 2016.

The tenant further testified that on February 23, 2016 he accepted the landlords offer, in writing, on the form provided by the landlord, and therefore he believes that since he accepted before the deadline of February 29, 2016 the landlords should be bound by the agreement to renew his lease for one year.

The tenant further testified that, in the offer to renew the lease for one year, the landlords requested a rent increase that exceeds the 2.9% allowed under the Residential Tenancy Residential Tenancy Act, and therefore he's seeking an order that the landlords be required to renew the lease with the rent increase of no more than 2.9%.

The landlords testified that since this is a fixed term tenancy agreement requiring the tenant to vacate at the end of the term, if a new tenancy agreement was signed, they are not bound by the 2.9% limit on rent increases as that does not apply to new tenancies, which is what this would be.

The landlords further testified that it is their understanding that, since they withdrew the offer to renew the lease before the tenant had accepted the offer, they are not required to renew the lease for another term. They notified the tenant on February 19, 2016 that they were withdrawing the offer, well before the tenant indicated his acceptance of the offer on February 23, 2016.

Analysis

It is my finding that the landlords did have the right to withdraw their offer to renew the lease with the tenant, as long as the withdrawal was communicated to the tenant before it was accepted.

The Court (In Byrne v. Man Tienhoven) said that "an offer can be withdrawn before it is accepted and it is immaterial whether the offer is expressed to be open for acceptance for a given time or not."

But a withdrawal has no effect until it is communicated to the person to whom the offer has been sent.

In this case the tenant has admitted that the landlords communicated the withdrawal to him on February 19, 2016 and therefore it was withdrawn before it was accepted by the tenant on February 23, 2016.

Therefore, since the offer was withdrawn before it was accepted, the landlords are not required to sign a new lease with the tenant, and this tenancy ends on April 30, 2016 pursuant to the fixed term lease that is presently in place.

Since this tenancy is ending on April 30, 2016, and the lease is not going to be renewed a decision on whether or not a rent increase is allowable is not required, however for the parties information, when parties are in a fixed term tenancy agreement, in which both the landlord and tenant have agreed that the tenant must vacate at the end of the tenancy, the tenant is required to vacate unless the parties enter into a new tenancy agreement.

Sections 42 and 43 of the Residential Tenancy Act impose restrictions on rent increases during a tenancy; however they do not limit, in any way, the amount of rent that can be imposed, or agreed to, at the beginning of a new tenancy. Therefore if a new fixed term tenancy was agreed to, the landlord had the right to impose any rent they believe the market would bear.

Conclusion

As stated above this tenancy ends on April 30, 2016 and the tenant is required to vacate by 1:00 pm on that date.

Further, as stated above the landlord is not restricted in the amount of rent that can be agreed to or imposed, at the beginning of a new tenancy.

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 12, 2016

Residential Tenancy Branch