



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on June 10, 2016. The Tenant filed seeking a \$12,000.00 monetary order; an order to have the Landlord comply with the *Act*, Regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's application for Dispute Resolution, the hearing documents, and the Tenant's evidence. No issues were raised relating to receipt or service of that evidence. As such, I accept the Tenant's submissions as evidence for this proceeding.

The Landlord confirmed she did not submit documentary evidence in response to the application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which began on June 1, 2010 and was set to end on May 31, 2011. Rent was initially \$2,400.00, payable on the first of each month, and was increased on an annual basis. Effective June 1, 2016 the

rent was increased to \$2,619.83. On April 19, 2010 the Tenant paid \$1,200.00 as the security deposit and on June 16, 2010 the Tenant paid \$1,200.00 as the pet deposit.

A copy of the written tenancy agreement was submitted into evidence. Section 2(b)(ii) of the tenancy agreement had been selected which states:

At the end of this fixed length of time: the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right.

[Reproduced as written]

The tenancy agreement submitted into evidence had the Landlord's initials to the right of section 2(b)(ii). The Landlord testified the original tenancy agreement that she held in her files had the Tenant's initials in that box.

The tenancy agreement, page 6 section 17, indicated there was an Addendum attached which formed part of the tenancy agreement. The tenancy agreement indicated the Addendum was one page in length and consisted of 9 additional terms. A copy of that addendum was submitted into evidence.

Item 1 of the Addendum states:

The Landlord agrees:

- 1. Offer one month free rent on the 13th month as an incentive to the renewal of 12 months lease.*

[Reproduced as written]

The parties did not enter into any subsequent written tenancy agreements after the initial written agreement was signed on April 19, 2010. The Tenant remained in possession of the rental unit for six years until June 30, 2016.

The Tenant testified she was of the opinion that she was entitled to one month's free rent for every 13th month she continued her tenancy as she had attempted to negotiate a reduced rent. She asserted that when the initial fixed term lease expired the Landlord refused to agree to give her additional free month's rent, as per their original agreement.

The Tenant stated she did not bring this issue forward sooner, and she paid rent for every month following the first free month, because she felt intimidated and because her family situation required that she continue her long term tenancy in the current location. The Tenant indicated she had two children who were attending schools in the

neighbourhood so she needed a long term tenancy for which she negotiated with the Landlord. The Tenant submitted her eldest child graduated from the high school in 2012 and her youngest child graduated from the high school in the neighbourhood in June 2016.

The Landlord disputed the Tenant's submissions and stated the agreement for the one month's free rent was for only a one-time occurrence which was for the 13th month of the initial fixed term tenancy. She provided the Tenant the 13th month free and that was the end of that agreement.

The Landlord asserted that she attempted to have the Tenant sign a subsequent lease agreement and when she refused to offer additional months of free rent the Tenant stated she wished to proceed with a month to month tenancy and refused to sign another lease.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find, pursuant to section 62 of the *Act*, the Tenant has submitted insufficient evidence to prove entitlement to a \$12,000.00 monetary award. I make this finding in part as the Tenant failed to mitigate the alleged loss, as is required by section 7(2) of the *Act*. Waiting five years until after the tenancy is over before seeking a

remedy for free rent does not meet the requirement for mitigation. If the Tenant truly was entitled to free rent she ought to have brought the issue forward to seek a remedy at the time the free rent was due.

Furthermore, the tenancy agreement addendum irrefutably states the Tenant would be granted one month free as “*an incentive to the renewal of 12 months lease*” and not the 13th, 26th, 39th, month of a month to month tenancy. In absence of any documentary evidence to prove the contrary, and in the presence of the Landlord’s disputed verbal testimony, I conclude the Tenant failed to provide sufficient evidence to prove the merits of her application. Accordingly, the application is dismissed in its entirety, without leave to reapply.

Conclusion

The Tenant was not successful with her application and it was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: July 20, 2016

Residential Tenancy Branch