



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, OPB, MNR, DRI, OLC, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on July 23, 2017 with an amendment made August 30, 2017 for:

1. An Order in relation to a rent increase - Section 43;
2. An Order for the Landlord to comply - Section 62;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 8, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord QJ were each given full opportunity under oath to be heard, to present evidence and to make submissions. Landlord OW was given full opportunity under affirmation to be heard, to present evidence and to make submissions

Preliminary Matters

The Landlord confirms that the claim for an order of possession was made in error as the Tenants had already moved out of the unit. This claim of the Landlord is therefore dismissed. As the claim in relation to an order for the Landlord’s compliance is only relevant to an ongoing tenancy I dismiss this claim of the Tenant. The Parties confirm that the Landlord named Tenant SU wrongly by changing the order of her name in the

application. I therefore amend the application to set out Tenant SU's name in the correct order.

Issue(s) to be Decided

Did the Landlord increase the rent in accordance with the Act?

Is the Tenant entitled to a return of rent monies?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The Parties entered into a written tenancy agreement providing that the tenancy started on May 1, 2014 on a fixed term to end April 30, 2015. Rent of \$1,480.00 was payable on the 3rd day of each month. At the outset of the tenancy the Landlord collected \$740.00 as a security deposit and \$300.00 as a fob deposit. The Tenants moved out of the unit on July 31, 2017 and returned the fobs. The Landlord did not return the fob deposit. The Tenant provided it forwarding address on July 31, 2017. The Parties mutually conducted a move-in condition inspection with a copy of the condition report provided to the Tenants. Although the Parties mutually conducted a move-out inspection and a condition report was completed, a copy of this report was not provided to the Tenants.

It is noted that the written tenancy agreement did not require the Tenants to move out of the unit at the end of the fixed term. The Parties agree that at the end of the fixed term the tenancy agreement provides that the tenancy will either continue as a month to month tenancy or for another fixed term. The Parties agree that at the end of the original fixed term the Parties did not sign any other tenancy agreements.

The Parties agree that the Landlord increased the rent effective April 1, 2016 to \$1,600.00 and again effective November 1, 2016 to \$1,650.00. The Parties agree that

the increases were not provided on an RTB form or with three months' notice. The Parties agree that the Tenants did not agree in writing to either of the increases. The Tenant claims \$539.56 for return of the rental increases collected by the Landlord for the months April to October 2016 inclusive and \$1,143.72 for the months November 2016 to July 2017 inclusive. The Landlord argues that they had the right to increase the rent as the original rental amount was below market rent for the similar units in the area.

The Parties agree that that on June 27, 2017 the Tenants gave notice to move out of the unit on July 31, 2017. The Landlord states that as the Landlord's would be on vacation they did not expect to have sufficient time to obtain new tenants for August 1, 2017, the Landlord asked the Tenants to move out on August 31, 2017 instead. The Landlord states that on June 29, 2017 the Tenants sent an email agreeing to move out for September 1, 2017. The Parties agree that on July 8, 2017 the Tenants informed the Landlord that they would move out of the unit on July 31, 2017. The Landlord states that after the Tenants agreed to stay for August 2017 the Landlord advertised the unit for rent for September 1, 2017 at a rental rate of \$1,950.00. The Landlord states that they also advertised an open house for July 15, 2017. The Landlord states that after receiving the Tenant's notice that they would be moving out at the end of July 2017 the Landlord did not change their advertisement and instead only informed the persons attending the showing on July 15, 2017 that the unit was available for August 1, 2017. The Landlord states that none of the persons who attended the showing was able to rent for that date as they had to provide a full months' notice. The Landlord states that a new tenant was accepted for September 1, 2017. The Landlord argues that as the Tenant did not provide a full month's notice to move out of the unit the Tenant now owes unpaid rent for August 2017 and the Landlord claims the amount of \$1,650.00 for that unpaid rent.

Analysis

Section 14(2) of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and

tenant agree to the amendment. As the Parties did not sign another tenancy agreement or an agreement to amend the written tenancy agreement and as the original tenancy agreement did not require the tenancy to end at the end of the fixed term, I find that the terms of the original tenancy agreement continued at the end of the fixed term, or April 30, 2015, with the same rental rate on a month to month basis.

Section 42 of the Act provides that:

- (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
 - (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.

Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

The allowable rent increase for 2015 was 2.5%. The allowable rent increase for 2016 was 2.9%. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations.

As no further tenancy agreements were entered into and as a Landlord may not use another fixed term tenancy to contract out of the rent increase requirements under the Act I find that the Landlord could only increase the rent in accordance with the Act. As the Landlord did not seek any rent increase by providing the required notice or using the required form and as the Landlord collected a rent increase significantly more than the amount allowed under the Regulations I find that the Landlord collected a rent increase that did not comply with the Act.

Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. As the Tenant did not agree in writing to the rent increases and as the rent increases were over the allowable rent increases I find that the Tenants are entitled to return of the increased amount of rent as claimed in the amount of **\$1,683.28** (\$539.56 + 1,143.72). As the Tenants have been successful with its claim I find that the Tenants are also entitled to recovery of their **\$100.00** filing fee for a total entitlement of **\$1,783.28**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the Tenant was short a few days on the required full month notice, as the Landlord advertised the unit at a much higher rental amount and as the Landlord did not change the advertisement to an August 1, 2017 start date I find that the Landlord failed to take any reasonable steps to reduce the rental loss that it claims against the Tenant. I therefore dismiss the Landlord's claim for unpaid rent or lost rental income of \$1,650.00. As the Landlord's primary claim has not been successful I dismiss the Landlord's claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

As the Tenants returned the fobs, I order the landlord to return the fob deposit of **\$300.00** forthwith. I include this amount in the monetary order **\$2,083.28** (\$1,783.28 + 300.00) for the Tenants however if the Landlord has returned this amount prior to receipt of this Decision the Landlord may consider this amount of the monetary order to be fully satisfied. I make the monetary order in the Party names as set out in the Tenant's application.

Neither Party claimed the return or the retention of the security deposit. As it is undisputed that the Landlord did not provide a copy of the move-out report to the Tenants, the Landlord received the Tenants' forwarding address on July 31, 2017 and the Landlord did not return the security deposit or make any claim against the security deposit, the Tenant remains at liberty to make an application for return of double the security deposit.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,083.28**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 13, 2017

Residential Tenancy Branch