



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OPT, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. A Monetary Order for compensation - Section 67; and
3. An Order of Possession - Section 54.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that they have not moved out of the unit.

Issue(s) to be Decided

Has the Landlord ended the tenancy and is the Tenant entitled to an order of possession?

Has the Landlord increased the rent in accordance with the Act?

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The original tenancy started in 2010. The Tenant was paying rent of \$250.00 per month. The Landlord purchased the property containing the rental unit in 2015 and continued to collect rent of \$250.00 per month. The Parties entered into a written tenancy agreement in June 2016 for rent of \$250.00 payable on the first day of each

month. The term of the tenancy was fixed and to expire on May 31, 2017. The tenancy agreement required the Tenants to move out of the unit on this date. The Tenants did not move out of the unit at the end of the fixed term.

The Tenant states that after making a written request to continue the tenancy the Landlord agreed to continue the tenancy for July and August 2017. The Tenant states that they did not agree to a new fixed term and that the Landlord did not provide another fixed term tenancy agreement to sign. The Tenant states that the Landlord sent an email informing the Tenants that the Landlord expected the Tenants to vacate at the end of August 2017. The Tenant states that they did not agree to move out.

The Landlord states that a written tenancy agreement was entered into as the Landlord felt that the fixed term was important. The Landlord states that another written fixed term agreement was not offered because they felt that an understanding had been reached with the Tenant that the Tenant would move out of the unit at the end of July and again at the end of August 2017. The Landlord states that at the end of the fixed term the Landlord only verbally agreed to extend the tenancy for one month at a time. The Landlord states that there is no email from the Tenant agreeing to this term. The Landlord states that no subsequent written tenancy agreement was entered into as the Parties had an oral understanding that the Tenants would vacate the rental unit when the construction of their own house was completed. The Landlord states that they had no reason to believe that it was necessary to put the agreement into writing as the Tenant had continued to indicate in emails that they were nearly moved out of the unit. The Landlord states that they have no email reply indicating the Tenant's agreement to move out at the end of any month.

The Tenant states that the Landlord arbitrarily increased the rent to \$750.00 starting June 1, 2017 by way of an email. The Tenant states that this amount has since been paid each month to the Landlord. The Tenant states that they believe the rent increase was given to them as revenge for not moving out of the unit. The Tenant claims return

of the overpayment of rent to and including October 2017 in the amount of \$2,000.00. The Landlord states that the Tenant's rent cheques for September and October 2017 have not been cashed. The Landlord disputes the Tenant's claim for return of the rental increase.

The Landlord states that the rent payable was below market and that the amount was agreed to on the basis of the Tenant carrying out certain work as done with the previous tenancy. The Landlord states that the rent was increased for June 1, 2017 as the fixed term tenancy had expired and in order to reflect the market value. The Tenant states that he did not have any agreement with the Landlord to carry out any work as agreed to in the previous tenancy prior to the purchase by the Landlord. The Tenant states that the previous tenancy agreement was written and set out rent of \$250.00 plus work to be done by the Tenants. The Tenant states that there was never any agreement to do work for the new Landlord and that the Tenant only agreed to take the rental unit "as is and where is" and that the Tenant agreed to maintain the unit.

The Tenant states that the Landlord has never given the Tenants any reason for having to move out of the unit. The Tenant states that they never intended to leave the property as they were in the process of building their house and that they believed they were in a month to month tenancy. The Tenant states that when the tenancy was continued after May 2017 the Landlord informed them that they agreed with this as another tenancy was continued on the property as well.

Analysis

Section 44 of the Act provides that a tenancy ends where the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. Although the tenancy agreement required the Tenant to move out at the end of the tenancy based on the undisputed facts that the tenancy continued on the verbal agreement of both Parties and as the Landlord did not

enforce the end of the tenancy on the fixed term date set out in the written tenancy agreement, I find that the tenancy continued after May 31, 2017.

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. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy. Policy Guideline #30 provides that a landlord may not apply for possession of a unit at the end of a fixed term unless the landlord and tenant entered into a written agreement specifying that the tenancy agreement shall end on a specified date. Taken together I consider that these sections of the Act and policy act to require that an end date on a written fixed term tenancy may only be amended in writing. Even if the Tenant did indicate that it was in the process of packing and even if this did cause the Landlord to agree to extend the fixed term date, as there is no written agreement providing for an end date requiring the Tenant to move out of the unit and given the Tenant's evidence that it did not agree to another fixed term tenancy, I find that the tenancy continued after the May 31, 2017 as a month to month tenancy.

Section 44 of the Act sets out how a tenancy may end. Where a landlord seeks an end to a month to month tenancy the Landlord must use the approved RTB form to validly end the tenancy. As the Landlord did not use any form to end the tenancy I find that the Landlord did not end the tenancy and that the tenancy continues. As the Tenant continues to reside in the unit I find that the Tenant currently has possession of the unit and does not require an order for such possession. I therefore dismiss the claim for an order of possession.

Section 42(3) of the Act provides that 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 calculated in accordance with the regulations. The

allowable rent increase for 2017 is 3.7% of the rent payable. 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 Landlord did not increase the rent using an approved form and as the Landlord increased the rent significantly higher than allowed I find that the Landlord is not entitled to collect this rent increase and that the rent payable is restricted to \$250.00 until increased in accordance with the Act. I find that the Tenant is entitled to return of the overpaid rent for June, July, August, September and October 2017 in the amount of **\$2,500.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the entitlement. Should the Landlord return the Tenant's cheques for September and October 2017 the partial amount of \$1,000.00 out of the total entitlement will be considered fully satisfied.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,500.00**. 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: November 2, 2017

Residential Tenancy Branch