



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- dispute an additional rent increase by the landlord pursuant to section 43; and
- recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by his agent PM (the "landlord").

As both parties were present service of documents was confirmed. The landlord testified that they received the tenant's application for dispute resolution and evidence. The landlord said they had not served any evidence. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should an order be made regarding the disputed additional rent increase?
Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced

here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. The rental unit was previously owned by the tenant who sold it to the landlord in 2016. The parties agreed that the tenant could reside in the rental building and that she would pay the landlord a monthly rent of \$1,500.00. No written tenancy agreement was prepared.

In January, 2017 the parties decided that the monthly rent would be \$2,100.00. Again, the agreement was negotiated and agreed upon but no written tenancy agreement was prepared.

In January, 2018 the parties negotiated and entered into a new agreement. A written tenancy agreement was prepared and signed by the parties. A copy of the agreement was submitted into evidence. The agreement provides that rent in the amount of \$2,400.00 is payable from January, 2018.

The tenant said that after signing the tenancy agreement, she discovered that the change in monthly rent from \$2,100.00 to \$2,400.00 is greater than a rental increase that is allowed under the *Act* and Regulations. The tenant testified that while she signed the tenancy agreement, she feels she had no choice and did not agree to its terms. The landlord testified that the \$2,400.00 monthly rent was set after some negotiation and back-and-forth between the parties.

Analysis

I find that the agreement signed by the parties in January, 2018 is a valid tenancy agreement. Prior to this agreement there was a valid oral tenancy agreement where the monthly rent was \$2,100.00. I find that the new agreement of January, 2018 is not an instance of a rental increase but the parties entering into a new agreement and setting a new monthly rental amount.

There was no obligation on either party to enter the new agreement of January, 2018. If the parties could not agree on the terms the tenancy would have continued on a periodic basis with a monthly rent of \$2,100.00 until the rent was increased in accordance with the *Act*. I do not find the tenant's submission that she was forced into the agreement to be persuasive. If the tenant did not agree with the terms of the written tenancy agreement she did not have to sign the agreement. Based on the evidence I find that the tenant understood the terms of the agreement as presented to her. The tenant had the ability to seek legal advice or assistance if she chose to do so. I find that

there is no evidence that the written tenancy agreement submitted into evidence should be quashed.

I find that there was a valid oral tenancy agreement between the parties and that the parties entered into a new tenancy agreement beginning January, 2018. The terms of the new agreement were recorded in the written tenancy agreement. I accept the landlord's evidence that the monthly rent of \$2,400.00 was set after some negotiation with the tenant. I find that this is not a situation where the landlord issued a unilateral rent increase above that which the Act would provide, under the guise of a successive tenancy agreement. Instead, this was parties entering into a new agreement and setting a new monthly rent.

I find that there has been no rental increase. Accordingly, I dismiss the tenant's application.

As the tenant's application was unsuccessful the tenant is not entitled to recover the filing fee for this application from the landlord.

Conclusion

The tenant's application is dismissed without leave to reapply. This tenancy will continue pursuant to the terms of the January, 2018 tenancy agreement with rent at the given amount of \$2,400.00.

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: March 14, 2018

Residential Tenancy Branch