



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to dispute a rent increase, for an order directing the landlords to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they had the opportunity to review the documentary service served upon them by the other party prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that the word "East" was missing from the rental unit address and was corrected by consent of the parties and pursuant to section 64(3) of the Act.

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should a proposed rent increase be upheld or cancelled under the *Act*?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2017 and reverted to a month to month tenancy after September 1, 2018 as the tenant did not agree with the proposal made for another fixed-term tenancy. The original tenancy agreement indicates that monthly rent of \$2,000.00 is due on the first day of each month.

The parties agreed that a correct Notice of Rent Increase was served by the landlords on the tenant dated June 29, 2018 increasing the monthly rent from \$2,000.00 to \$2,080.00 which is a 4% increase effective October 1, 2018.

The landlords' position is that a verbal discussion regarding a limit on the number of tenants was discussed before or around the time the tenancy agreement was originally signed. The original tenancy agreement and addendum does not indicate that monthly rent will increase if occupants exceed a specific number. There are two tenants listed on the original tenancy agreement. There is no dispute that one of the original tenants, EL is no longer residing in the rental unit.

Although the landlords testified that the tenant requested a new tenancy agreement to account for a 5th occupant, the tenant denied that he requested that from the landlords. The tenant is disputing a second and third proposal submitted in evidence. The tenant stated that the only change to the tenancy agreement he requested from the landlords was to add permission for a dog to the tenancy agreement and to replace the tenant who moved away with the name of his girlfriend, MPC.

I will focus on the document entitled "3rd proposal" as that tenancy agreement ("3rd proposal") indicates a monthly rent of \$2,500.00 per month and the tenant indicated that he refused to sign that fixed-term tenancy and decided to apply for dispute resolution.

The landlords feel that the application was not necessary as the proposal was not a notice of rent increase and was just a proposal.

Analysis

Based on the oral testimony and documentary evidence before me, and on a balance of probabilities, I find the following. Section 43 of the *Act* states:

Amount of rent increase

43 (1) 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 residential units for 2018 is 4%. As a result, the rent increase of 4% to \$2,080.00 effective October 1, 2018 I find to be lawful and enforcement. I find the “3rd proposal” however to be an attempt by the landlords to increase rent contrary to the *Act* and is not enforceable.

As mentioned in the hearing, disputed verbal agreements do not trump binding written tenancy agreements under the *Act* and the tenant denies that additional occupants were ever discussed in relation to the original tenancy agreement as noted in the “details of dispute” for this application before me. Therefore, I find that the original tenancy agreement does not contain a term that would increase rent for additional occupants and that the 3rd proposal is of no force or effect. I do not accept that there was a verbal agreement for a higher cost per occupant discussed at the start of the tenancy as I find that if it was, it is reasonable to conclude that such an important term would have been included on the Addendum which it was not.

Based on the above, I find the rent for 2018 effective October 1, 2018 remains \$2,080.00 and I caution the landlords to ensure that all rent increases are in accordance with the *Act*. I also caution the landlords to ensure that all terms agreed upon by the parties are in writing as requested by section 13(1) of the *Act*.

As the tenant's application was successful, I grant the tenant a one-time rent reduction of **\$100.00** from a future month's rent in full satisfaction of the recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I find the "3rd proposal" document before me was an attempt by the landlords to increase rent contrary to section 43 of the *Act*. I order that the tenant's rent remains at \$2,080.00 per month effective October 1, 2018 until increased in accordance with the *Act*.

The tenant has been granted a one-time rent reduction of \$100.00 for the filing fee as indicated above.

The landlords have been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: October 26, 2018

Residential Tenancy Branch