



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI OLC

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
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

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.

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?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The parties agreed on the following facts. The rental unit is in a multi-unit rental building. The tenant originally moved into the dispute address in 2014. The tenant paid a monthly rent of \$545.00 at that address. In June, 2018 there was a fire in the building

and several rental units, including the dispute address, became uninhabitable. The tenant moved out of the building at that time. Another unit became available and the tenant moved into that suite. The monthly rent for that suite is \$725.00. No written tenancy agreement was prepared.

The tenant submits that despite moving from one suite to another, this is all one tenancy and the increase of monthly rent from \$545.00 to \$725.00 is greater than that permitted under the Act.

The landlord submits that the fire of June, 2018 frustrated and ended the previous tenancy and the parties entered into a new tenancy agreement for the different unit at a rental rate of \$725.00.

Analysis

Residential Tenancy Policy Guideline 34 provides that:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

I find that there was a valid tenancy agreement for the original suite with rent in the amount of \$545.00. I find that this tenancy became frustrated and ended when there was a fire making the suite uninhabitable in June, 2018. At that time the original tenancy agreement and the obligations for each party therein ended.

I find that the parties entered into a new tenancy agreement for a separate unit in June, 2018 with a monthly rent of \$725.00. I find that the new tenancy is not an instance of a rental increase but the parties entering into a new agreement with a new monthly rental amount.

There was no obligation on either party to enter the new agreement of June, 2018. If the parties could not agree on the terms the tenant was not obligated to move back into the rental building. If the tenant did not agree with the terms of the agreement she could find alternate housing.

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 or a violation of the *Act*, regulations or tenancy agreement. Accordingly, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: September 21, 2018

Residential Tenancy Branch