



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant(s) seeks the following:

- a. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord did not provide any documents for the hearing.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 26, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the Tenant(s) are entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?
- b. Whether the Tenant(s) are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on February 2012. The tenant and her common law husband initially were in another unit. They subsequently transferred to the rent unit which is the subject of this tenancy. The present rent is \$1030 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$397.50 at the start of the tenancy. .

In March 2018 the Tenant's common law husband passed away. The Tenant is presently 78 years old. The Tenant was told by the landlord that she was required to sign a new lease or else she would be required to leave. The tenant produced a tenancy agreement that provided that the tenancy would start on April 1, 2018 and end on September 30, 2018. That agreement indicates there would be a rent increase on April 1, 2019.

The tenant's brother moved in to live with her. This move permitted her brother to be closer to his doctor who was treating him for cancer.

The landlord relies on a Mutual Agreement to End the Tenancy dated September 8, 2018 and setting the end of tenancy for March 31, 2019. The tenant testifies that she has no recollection of signing the mutual agreement to end the tenancy. The landlord did not provide her with a copy of that document.

On December 21, 2019 the landlord provided the Tenant with a Notice of Rent Increase that increased the rent to \$1030 commencing April 1, 2019.

On February 25, 2019 (it is misdated stating February 25, 2018) the Tenant testified she received a letter from the letter purportedly reminding her that the parties signed a Mutual Agreement to End the Tenancy on September 8, 2018 and that she was required to vacate the rental unit on March 31, 2019.

The requested she be allowed to remain in the rental unit but the landlord refused.

The landlord was not able to provide an adequate explanation as to why he wished to evict the tenant apart from the signed Mutual Agreement.

Analysis

Section 5(1) of the Act provides that landlords and tenants cannot avoid or contract out of the Act and that any attempt to do so is of no effect. Section 6 provides that a term of the tenancy agreement is not enforceable if it is inconsistent with the Act or regulations or it is unconscionable.

On December 11, 2017 the law relating to fixed term tenancies in which a tenant would have to vacate at the end of the fixed term was changed. Such a requirement to no longer enforceable unless the landlord intended to rent the rental unit to a close family member or it was a sublease. It also requires that the landlord be an individual.

After carefully consideration of all of the evidence and the submission of the parties I determined the Mutual Agreement to End the Tenancy is of no force and effect for the following reasons:

- a. I determined the landlord failed to provide sufficient evidence to prove the Tenant signed the document. She denies signing it. There are no witnesses.
- b. The landlord served a Notice of Rent Increase on the Tenant that purported to increase the rent commencing April 1, 2019. This is inconsistent with a landlord wishing to end the tenancy on March 31, 2019 and it significantly mislead the Tenant.
- c. I determined that even if the tenant the Mutual Agreement to End the tenancy it is of no force and effect. This is a long term tenancy. The law does not require the tenant to sign a new tenancy agreement especially where the landlord purported to change it to a fixed term.
- d. I determined the landlord is attempting to avoid the requirements of the Act and Regulations. The Act provides that a term in the tenancy agreement that would require the tenant to vacate at the end of the fixed term would not be valid as the landlord is not an individual, this is not a sublet or a situation where the rental unit is intended to be rented to a close family member. The landlord cannot avoid this obligation by requiring the tenant to sign a Mutual Agreement to End the Tenancy.
- e. I determined the Mutual Agreement is unconscionable. The landlord failed to provide an adequate explanation as to why it was necessary for the Tenant to sign the Mutual Agreement. She did not have a legal obligation to sign a new tenancy agreement.
- f. I determined there was no consideration that would validate the Mutual Agreement. The landlord did not provide the Tenant with value for signing the Mutual Agreement as there was no legal basis to end the tenancy.

Conclusion:

I determined the Mutual Agreement to End the Tenancy is of no force and effect. I ordered that the tenancy shall continue with the rights and obligations of the parties remaining unchanged on the basis of a month to month tenancy until ended in accordance with the Act.

As the tenant has been successful I ordered that the landlord pay to the Tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: April 23, 2019

Residential Tenancy Branch