



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was set to hear a tenant's application to dispute a rent increase that is above the amount permitted under the law. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence and I admitted the documents into evidence and have considered them in making this decision.

Issue(s) to be Decided

Has the tenant paid an unlawful rent increase?

Background and Evidence

The tenant took possession of the rental unit in approximately 2010. The landlord and the tenant executed new tenancy agreements every year. The most recent tenancy agreement executed by the parties was executed in February 2018 for a fixed term set to commence on May 1, 2018 and expire on March 31, 2019. The rent was set at \$1,300.00 per month and required payment of a \$650.00 security deposit. The addendum also included a new term concerning growing or manufacturing marijuana. The tenant has been paying rent of \$1,300.00 since May 1, 2018 and paid the increase in the security deposit so that the landlord is holding \$650.00 as a deposit.

Immediately prior to the tenancy agreement that started on May 1, 2018 the parties had a former agreement for the fixed term period of May 1, 2017 through to April 30, 2018 whereby the monthly rent was set at \$1,200.00 and the security deposit was \$600.00.

Under the former tenancy agreement is a term requiring the tenant to vacate the rental unit by April 30, 2018: the end of the fixed term.

The tenant is of the position that the increase in his rent obligation from \$1,200.00 to \$1,300.00 per month is unlawful since it was not accompanied by a Notice of Rent Increase and the amount of the rent increase exceeds the annual allowable amount. As such, the tenant seeks to recover the \$100.00 increase he has paid every month since May 1, 2018 and the additional \$50.00 toward the security deposit.

In addition, the tenant submitted that the landlord issued Notice of Rent Increase dated March 27, 2019 with an effective date of July 1, 2019 to increase the rent from \$1,300.00 to \$1,332.50. The tenant was of the position that the rent increase is incorrect since it is based on the previous unlawful rent increase to \$1,300.00 per month.

The tenant explained that when he signed the tenancy agreement in February 2018 he was unaware of the legislative changes that took effect in December 2017. He also stated that the landlord told him that she was considering selling the property.

Both parties submitted a copy of the tenancy agreement executed in February 2018.

The landlord also submitted several email exchanges prior to executing the most recent tenancy agreement. The landlord also submitted that she has put the property for sale in February 2019.

As a matter of record the landlord requested that in the future the tenant serve her at her new service address that has been included on the cover page of her submission.

Analysis

Section 26 of the Act provides that a tenant must pay rent when due in accordance with their tenancy agreement. Section 13 of the Act requires that a tenancy agreement set out the amount of rent payable for a specified period of time. The rent increase provisions of Part 3 of the Act provide the landlord a mechanism to increase the rent beyond the amount stipulated in the tenancy agreement.

In December 2017 the Act was amended to prohibit landlords from enforcing vacate clauses in the tenancy agreement, except in limited circumstances such as the owner of the rental unit intending to occupy the rental unit at the end of the fixed term. The

change applied to tenancy agreements already in force. Accordingly, the vacate clause that was in the former tenancy agreement could not be enforced unless the landlord intended to occupy the rental unit.

There is no indication that the landlord intended to occupy the rental unit upon the end of the April 2018 fixed term. Rather, it appears from the email communication that the landlord was pondering options for the property, including the sale of the property, which she is permitted to do.

When the tenant was presented a new tenancy agreement in February 2018 he had a choice to agree to the terms presented to him, counter-propose or negotiate the proposed terms, or decline to agree to any different terms or a new agreement since he would not have been at risk of his tenancy ending upon the expiry of the fixed term.

I note that the tenancy agreement executed by the parties in February 2018 includes the following statement above their signatures: "by signing this tenancy agreement, the landlord and the tenant are bound by its terms." Accordingly, I find I am satisfied the tenant entered into a new tenancy agreement set to commence May 1, 2018 and the tenant became bound to comply with its terms, including: paying a monthly rent of \$1,300.00; paying \$650.00 for a security deposit; and, not growing or manufacturing marijuana.

When parties enter into a new tenancy agreement, the new agreement replaces the former agreement and the rent increase provisions of Part 3 do not apply since the new tenancy agreement sets the amount of the rent payable by the tenant.

In order for me to set the rent back to \$1,200.00 per month, as sought by the tenant, I would need to be satisfied the tenancy agreement executed in February 2018 is invalid or otherwise unenforceable. The tenancy agreement executed by the parties is on a form generated by the Residential Tenancy Branch and I am satisfied that it contains all the required terms for a tenancy agreement. I find the tenant's statement that he was unfamiliar with the legislative changes of December 2017 or the landlord's statement that she may sell the property to constitute duress which is a circumstance that may render a contract invalid. It is important to note that a landlord is at liberty to sell a property at any time and a landlord's statement that they may sell the property is merely informative.

It remains that I was not presented a basis for me to set aside the tenancy agreement executed by the parties in February 2018 and I find that agreement remains in effect.

Accordingly, the tenant's monthly rent obligation is \$1,300.00 as provided in the tenancy agreement and shall remain at \$1,300.00 until it is lawfully increased. Since the tenant has been paying \$1,300.00 per month since May 1, 2018 I find the tenant has not overpaid his rent and he is not entitled to the \$100.00 per month he is seeking.

Upon review of the Notice of Rent Increase issued on March 27, 2019, it appears to be in the approved form given with at least three full months of advance notice and the amount of the rent increase does not exceed the annual allowable amount of \$2.5%. Accordingly, I find no basis to set aside the Notice of Rent Increase and the tenant's rent obligation will increase to \$1,332.50 starting July 1, 2019.

In light of the above, I find the tenant has been paying the lawful amount of rent he is required to pay under his tenancy agreement and he has received a valid Notice of Rent Increase set to take effective July 1, 2019. Therefore, I dismiss the tenant's application in its entirety.

Conclusion

The tenant has not paid an unlawful rent increase and the Notice of Rent Increase set to take effect on July 1, 2019 is valid. Accordingly, the tenant's application is dismissed in its entirety.

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: June 25, 2019

Residential Tenancy Branch