



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCORD PARK AVENUE LIMITED PARTNERSHIP and PROMPTON
REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's property manager (the "landlord") and tenant R.G. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution on June 15, 2019, via registered mail. The landlord confirmed receipt of the tenants' application for dispute resolution but did not know of what date it was received. I find that service of the tenants' application for dispute resolution was effected on the landlord on June 20, 2019, five day after its mailing, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 10, 2019 and is currently ongoing. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree to the following facts. The tenancy agreement was signed by both parties on May 31, 2018. On June 12, 2018 the parties agreed to add an additional term to the tenancy agreement. Section 49.1 was added to the tenancy agreement on June 12, 2019 and was initialed by both parties. Section 49.1 of the tenancy agreement states:

In order for the tenant(s) who is/are named in this one-year lease to benefit from the last month's free rent they must pay for the 11 months of the term and remain in good standing with no outstanding monies owed for the full-term of this lease. This benefit is non-transferable.

The tenant testified that the day after she agreed to the above term and initialed the addition to the tenancy agreement, she called the landlord and asked what was meant by "outstanding monies" stated in section 49.1 of the tenancy agreement. The tenant testified that the landlord informed her that "outstanding monies" meant outstanding rent.

Both parties agree to the following facts. The strata at the subject rental property has levied numerous strata by-law fines against the tenants which remain outstanding. The landlord has refused to give the tenants their 12th month free because the strata fines have not been paid by the tenants.

The tenant testified that she did not have any written correspondence from the landlord stating what was meant by "outstanding monies".

The tenant is seeking an Order that the landlord comply with section 49.1 of the tenancy agreement and give her the 12th month of rent free because the strata fines are not “outstanding monies” as stated in that section.

The landlord testified that she never told the tenant that “outstanding monies” pertained only to rent and that she told the tenant that “outstanding monies” included unpaid strata fines.

Analysis

Section 49.1 of the tenancy agreement states:

In order for the tenant(s) who is/are named in this one-year lease to benefit from the last month’s free rent they must pay for the 11 months of the term and remain in good standing with no outstanding monies owed for the full-term of this lease. This benefit is non-transferable.

The parties disagree on the meaning of “outstanding monies”. I find that neither party has provided physical evidence as to what the parties agreed that term to mean when it was added to the tenancy agreement. In the absence of the above information, I rely on section 49.1 of the tenancy agreement, as written. I find that the plain meaning of “outstanding monies” is not limited to rent, but to any amount of money owed from the tenant to the landlord. I find that had the landlord intended to limit “outstanding monies” to mean rent, they would have used that word.

Based on the above, I find that the tenants have outstanding monies owed and the landlord has therefore not breached section 49.1 of the *Act*. I dismiss the tenants’ application for dispute resolution.

Conclusion

The tenants' application is dismissed 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: July 25, 2019

Residential Tenancy Branch