



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied to dispute a rent increase from the landlords, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The tenants, their legal advocate, the landlords and their legal advocate attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I consider and refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The tenants' monetary claim was \$10,000.00. At the beginning of the hearing, the tenants' legal advocate said they were dropping their claim of \$5,200.00 for pain and suffering.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlords' notice of a rent increase?

Are the tenants entitled to monetary compensation allowed under the Act?

Are the tenants entitled to recover the filing fee paid for their application?

Background and Evidence

The undisputed evidence is that this tenancy began on June 1, 2011. I also heard evidence that the tenants and landlords share a home, in different suites.

The male tenant said he would provide the tenants' evidence, due to language issues by his wife.

The remaining monetary claim by the tenants was \$4,800.00 for overpayment of rent for an alleged illegal rent increase in 2018.

In support of their application, the tenant explained, in relevant part, that they agreed to a rent increase in 2018, which was above the limit allowed by the Residential Tenancy Branch ("RTB"). The tenant submitted that they paid \$400.00 per month in excess of the allowed limit since June 2018, for which they seek reimbursement.

The tenant submitted that in 2017, the monthly rent was \$2,075.00. The tenant submitted that they were provided two dates in 2018 to begin negotiations with the landlords on the increased monthly rent for that year. The first proposed rent increase was from \$2,075.00 to \$2,975.00.

Following negotiations, the parties settled on the monthly rent amount of \$2,475.00, beginning on June 1, 2018. The parties submitted a copy of the signed written tenancy agreement which showed monthly rent for \$2,475.00, for a fixed term through May 31, 2019. The tenancy agreement also showed that the landlord and tenant may agree to

enter into a new tenancy agreement, but if not, the tenancy continues on a month to month basis on the same terms.

The tenant submitted that they did not want to agree to such a large increase, which was \$400.00 per month, but felt pressured into signing the document as the female landlord implied her father would move into the rental unit if not agreed upon.

The tenant submitted that the landlords wanted to again enter into negotiations for a new written tenancy agreement in 2019 with an increase in monthly rent from \$2,475.00 to \$3,000.00. The tenant said they have not agreed to that amount as they cannot afford it, which led them to file this dispute.

The tenant submitted that they have not been given a Notice of Rent Increase from the landlords in 2019, on the RTB form, though was one filled out to start negotiations.

The tenants' legal advocate stated that the tenants are entitled to \$4,800.00 as overpayment, as they were under duress to sign the written tenancy agreement.

Landlords' response-

The landlords submitted that there were only nominal rent increases since 2011, when the tenancy began, and only requested less than a 4% rent increase once every three years. The landlords submitted that the amount of total increase in six years was \$125.00.

The landlords submitted that the negotiations in 2018 for a rent increase were friendly and non-threatening. The female landlord submitted that her father is now living with her sister.

The landlords submitted that they wanted to discuss a rent increase for 2019 with the tenants and initiated the negotiations through an email. The tenants replied that they agreed to the meeting to discuss the increase, which would be by way of a new written tenancy agreement, as has been the custom for several years. The landlords said they were surprised by the tenants' application for dispute resolution during the midst of negotiations, as they believed the negotiations were going smoothly.

Analysis

A substantial amount of evidence was submitted by both parties, all of which I have reviewed.

Under section 42 of the Act, a landlord may not impose a rent increase unless the notice is on the approved form and in the allowable amounts as stated in section 43.

Under section 43(1) of the Act, a landlord may impose a rent increase only up to the amount, among other things, that is agreed to by the tenant in writing.

In the case before me, I find the tenants agreed to a rent increase to \$2,475.00 beginning June 1, 2018, in writing, by virtue of the signed tenancy agreement.

That same written tenancy agreement also states that unless a new tenancy agreement is entered into, the tenancy continues on a month to month basis. As I explained at the hearing, as the parties have not entered into a new tenancy agreement, this tenancy now continues hereafter on a month to month basis. There is no requirement to sign new tenancy agreements each year in these circumstances.

Further, as I explained at the hearing, as the landlords have not issued the tenants a Notice of Rent Increase on the proper RTB form, their monthly rent remains at \$2,475.00 until such time as they have been served with Notice. What that means is the monthly rent may not increase more than 2.5% in 2019.

I therefore dismiss the tenants' application in dispute of a rent increase.

As to the tenants' claim for \$4,800.00 as overpayment, I find the evidence shows the parties entered into a series of willing negotiations and arrived at a mutually agreed upon amount. If the tenants believed that they were under duress to sign the new written tenancy agreement, their remedy was to file an application for dispute resolution, and at the time the occurrence happened, not a year later.

As such, I do not find the tenants have submitted sufficient evidence to show that they signed the 2018 tenancy agreement under duress.

I therefore dismiss their claim for \$4,800.00.

I likewise dismiss the tenants' request to recover their filing fee. Under section 43(2), a tenant may file an application to dispute a rent increase that does not comply with section 43(1) of the Act. As they did not receive such Notice, they were not compelled to file their application in dispute of rent increase.

Conclusion

The tenants' application has been dismissed for the reasons stated above.

The tenants' monthly rent remains at \$2,475.00 until they are issued a proper Notice of Rent Increase, at which time the rent increase is not to exceed 2.5% for 2019.

The tenants' application for recovery of their filing fee is dismissed.

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 15, 2019

Residential Tenancy Branch