



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

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

- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The executor of the landlord's estate (the "executor"), the executor's wife and the tenants 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 tenants testified that they served the executor with their application for dispute resolution on July 19, 2019 via registered mail. The executor testified that he received the tenants' application on July 20, 2019. I find that the executor was served with the tenants' application for dispute resolution in accordance with the *Act*.

Preliminary Issue- Landlord Named

In the tenants' original application, they named the executor as the landlord. However, the executor gave undisputed evidence that his late mother owned the subject rental property and was the tenants' landlord. Therefore, pursuant to section 64 of the *Act*, I amend the tenants' application to state the landlord as the estate of A.S.

Issues to be Decided

1. Are the tenants entitled to cancel a rent increase from the landlord, pursuant to section 42 of the *Act*?
2. Are the tenants 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 July 9, 2003. A written tenancy agreement was not entered into at this time. The tenants currently reside in the subject rental property which is no longer owned by the landlord or the landlord's executor. Rent is due on the first day of each month and a security deposit was paid by the tenants to the landlord. Neither party were certain as to what amount was paid by the tenants to the landlord.

Both parties agreed that in September of 2017 the rental rate was \$2,020.00. The executor testified that in 2017 he acted as the landlord's agent.

The tenants testified to the following facts. In September of 2017 the executor called and informed them that his brother was going to move into the subject rental property and that they would have to move out. During this conversation the landlord told them that the average rental rate in the area for a property similar to the subject rental property was \$4,000.00 per month.

The tenants testified that in mentioning the average rental rate of \$4,000.00 per month, the executor implied that if they did not pay \$4,000.00 per month, they would be evicted. The tenants testified that they felt that they did not have a choice, and that if they wished to stay at the subject rental property, they would have to increase their rental payments.

The tenants testified that they called the executor back and informed him that they agreed to pay the landlord \$3,000.00 per month from October to December 2017 and \$3,500.00 per month from January 1, 2018 onwards. Both parties signed a new tenancy agreement on October 28, 2017 for a fixed term tenancy from January 1, 2018 to

December 31, 2018. The tenancy agreement was entered into evidence and states that the rental rate for this term is \$3,500.00 due on the first day of each month.

The tenants submitted that the landlord increased the rental rate over and above the maximum amount permitted under the *Act*.

The executor testified that he called the tenants in September of 2017 to inform them that his brother was planning on moving into the subject rental property and that they would receive a Two Month Notice to End Tenancy for Landlord's Use of Property in the future but the timeline had not yet been decided. The executor testified that since the tenants were long term tenants, he wanted to give them advance notice, over and above the requirements of the *Act*, and that is why he called them before serving them with the Notice to End Tenancy. The executor testified that he may have mentioned the average rent in the neighbourhood but did not imply that the tenants would be evicted if they did not pay that rate.

The executor testified that the tenants called him back and offered to pay \$3,000.00 per month from October to December 2017 and \$3,500.00 from January 1, 2018 onwards if they could stay at the subject rental property until their new house was constructed. The executor testified that he discussed the tenants' proposal with the landlord and his brother and that they all agreed to accept the tenants' offer. A new written tenancy agreement was then entered into.

The tenants testified that they only decided to build their own home after they started paying higher rent.

Analysis

I find that the landlord, through her agent, did not impose a rent increase on the tenants in 2017/2018. I find that the tenants and the landlord's agent knowingly and willingly entered into a new verbal tenancy agreement between October and December of 2017 and entered into a new written fixed term tenancy agreement between January 1, 2018 and December 31, 2018.

I find that the tenants have not proved that they were forced to sign a new tenancy agreement or that the landlords directly or indirectly threatened to evict the tenants if they did not pay a higher rent.

I find that the tenants are required to abide by the terms of the written tenancy agreement they freely and willingly entered into. I therefore dismiss the tenants' application.

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's 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: September 19, 2019

Residential Tenancy Branch