



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR DRI FFT MNDCT OLC

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- Determination of a disputed rent increase pursuant to section 43;
- Authorization to recover filing fees from the landlord pursuant to section 72;
- A monetary award for damages and loss pursuant to section 67; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

The parties testified that the tenant has vacated the rental unit and withdrew the portions of the application disputing the 10 Day Notice and pertaining to an ongoing tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. The tenant first moved into the rental unit in 2016 at a monthly rent of \$1,800.00 payable on the first of each month. A security deposit of \$900.00 was paid at that time and is still held by the landlords. A copy of the 2016 tenancy agreement was provided into evidence.

In April, 2018 the parties entered into a new tenancy agreement for a monthly rent of \$2,100.00 payable on the first of each month. The security deposit of \$900.00 carried over into the new tenancy. A copy of the tenancy agreement initialled on each page and signed by the parties was submitted into evidence.

The tenant submits that the tenancy agreement of April, 2018 was in fact a rent increase above the amount allowed under the Act. The tenant submits that they felt they had no choice but to sign the new tenancy agreement and consent to the increased rental amount. The tenant testified that they have recently become aware of the amount of rent increase permissible under the Act and had communicated with the landlord their displeasure. The tenant now seeks a monetary award in the amount of \$5,700.00, the equivalent of the overpaid rent for the duration of the tenancy.

The landlord submits that the parties entered into a new agreement for rent in the amount of \$2,100.00 in the April, 2018 tenancy agreement. They submit that there was no obligation on the part of the tenant to agree to the new rent amount and that if the parties had not reached an agreement there was no basis for the landlord to end the tenancy at that time.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence of the parties I find that the agreement signed by the parties in April, 2018 is a valid tenancy agreement. Prior to this agreement the parties were bound by the terms of the earlier agreement. I find that the new agreement of April, 2018 is not an instance of a rental increase but the parties entering into a new agreement and setting a new monthly rental amount.

While both tenancy agreements pertain to the same property and the security deposit paid for the first tenancy carried over to the second, I find that the April, 2018 agreement is a new contract between the parties and not a means by which the landlord issued a rent increase above the statutory limit. There are some changes to the contents of the agreements such as the tenant's additional obligation to maintain the snow as well as the lawn maintenance in the April, 2018 agreement. The tenant testified that there was some negotiations and the monthly rent amount of \$2,100.00 was set after discussion with the landlord. The tenancy agreement submitted into evidence shows an original proposed rent amount of \$2,000.00 was crossed out and a new amount of \$2,100.00 entered, and agreed upon by the parties who each initialed the revision.

There was no obligation on the tenant to enter the April, 2018 tenancy agreement with the landlords. At the time the new agreement was signed by the parties the tenancy was continuing on a month-to-month basis. If the parties could not come to an agreement the tenancy would simply have continued in accordance with the terms of the 2016 agreement. There is little evidence that the landlord forced or coerced the tenant to enter the April, 2018 agreement. The tenant gave evidence that they understood the terms of the April, 2018 agreement.

Based on the evidence, I find that the parties entered into a new enforceable tenancy agreement on April 4, 2018. The terms of this new agreement provides that monthly rent is \$2,100.00. I find that there has been no rent increase in contravention of the *Act*, or any violation on the part of the landlord that would give rise to a monetary claim. Accordingly, I dismiss the tenant's application.

As the tenant was unsuccessful in their application they are not entitled to recover the filing fee from the landlords.

Conclusion

The portions of the tenant's application pertaining to cancellation of a 10 Day Notice to End Tenancy and an ongoing tenancy are withdrawn.

The balance of 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: November 7, 2019

Residential Tenancy Branch