



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, OT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 24, 2020 (the “Application”). The Tenant applied to dispute a rent increase that is above the amount allowed by law, for compensation for monetary loss or other money owed and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlords appeared at the hearing with P.N. to assist as well as the Witness. The Witness was outside the room until required. I explained the hearing process to the parties who did not have questions when asked. The Tenant, P.N., Landlord M.S. and the Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

P.N. advised that the Landlords did not receive the hearing package from the Tenant but did get it from the RTB. P.N. advised that the Landlords were fine with proceeding and were prepared to proceed. Given this, I did not go into service of the hearing package further.

P.N. advised that the Landlords did not receive the Tenant’s evidence.

The Tenant testified that he sent his evidence to the Landlords by registered mail at the address on the Application and provided Tracking Numbers 1 and 2. The Tenant had not submitted evidence of service. P.N. acknowledged the address for the Landlords on the Application is correct.

I told the parties I would make a decision on service of the Tenant's evidence in the written decision. However, during the hearing, the Tenant confirmed he was only relying on a Facebook message between him and his ex-girlfriend about a meeting with the Landlords. The Tenant sought to rely on this to support his position about what was said at the meeting. The Tenant acknowledged the Facebook message does not set out the contents of the meeting with the Landlords. I do not find the Facebook message helpful in this matter and I have not relied on it in my decision. Therefore, I do not find it necessary to decide further about service of the Tenant's evidence.

The Tenant testified that he received the Landlords' evidence by email April 22, 2020. The Tenant testified that he only noticed the email today. The Tenant took issue with the form of service. I advised the Tenant that email service is currently permitted given the pandemic. This is set out in the Director's Order dated March 30, 2020 available on the RTB website.

The Landlords had submitted the following evidence:

- Two written tenancy agreements involving the Tenant;
- A notice to end tenancy from the Tenant; and
- A letter from the Witness.

P.N. confirmed admissibility of the letter from the Witness was a non-issue because the Witness was present to give evidence. The Tenant confirmed admissibility of the two written tenancy agreements and notice to end tenancy was a non-issue given the nature of these documents. In the circumstances, I did not go into service further and I do not find it necessary to determine whether service was sufficient.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. The only documentary evidence I have considered are the two tenancy agreements as these are the only relevant pieces of evidence submitted. I have considered all oral testimony of the parties and Witness. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Was a rent increase imposed that was above the amount allowed by law?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant disputed a rent increase from \$1,200.00 to \$1,300.00 and sought compensation in the amount of \$800.00 for the eight months he paid the extra \$100.00.

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate.

The first written tenancy agreement was between Landlord H.S. as the landlord and the Tenant and N.K. as tenants. The tenancy started November 01, 2017 and was a month-to-month tenancy. Rent was \$1,200.00 per month. It was signed by all three parties.

The second written tenancy agreement was between Landlord H.S. as the landlord and the Tenant and Witness as tenants. The tenancy started June 01, 2019. The parties confirmed it was a fixed-term tenancy ending September 01, 2019, then became a month-to-month tenancy. Rent was \$1,300.00 per month. It was signed by all three parties. The parties agreed the tenancy ended January 31, 2020.

The Tenant testified as follows. N.K. was his girlfriend. N.K. ended up moving out of the rental unit. The Landlords said he could find a new tenant to live with him. The Landlords indicated the person would be a sub-tenant. He found the Witness who moved in May 30, 2019. The day before the Witness was to move in, the Landlords showed up and said they were going to raise the rent to \$1,300.00 per month. The Landlords did up the second tenancy agreement. He acknowledges him and the Witness were co-tenants on the agreement. When the parties discussed N.K. moving out and a new roommate moving in, the Landlords did not mention a rent increase. He had allowed the Witness to move in for \$750.00 per month in rent. He stuck with this and ended up paying the extra rent due to the rent increase.

The Tenant further testified as follows. He felt coerced into signing the second tenancy agreement. He felt like he did not have a choice but to sign the second tenancy agreement because otherwise he would be homeless. He believed this because the only tenancy agreement in place was with N.K., N.K. had moved out and he had agreed he would find a new roommate. In relation to the ongoing tenancy with N.K., he would have had to pay her portion of the rent owing.

The Tenant acknowledged the Landlords did not indicate to him that they would end the first tenancy agreement if he did not find a roommate. The Tenant said the tenancy

between him, N.K. and the Landlords was never ended in accordance with the *Residential Tenancy Act* (the "*Act*"). The Tenant acknowledged that, when he signed the second tenancy agreement, the agreement with N.K. was over and he had entered into a new tenancy agreement with the Witness and Landlords.

P.N. testified as follows. The increase from \$1,200.00 in rent to \$1,300.00 in rent was not a rent increase because there were two separate tenancy agreements. The tenancy with N.K. ended when the second tenancy agreement with the Witness was signed. These are two different tenancy agreements. The Tenant was given the option to continue on with the first tenancy agreement at the rate of \$1,200.00. The Tenant was told that, if there was a new tenant, there would be a new tenancy agreement. The Landlords did not force the Tenant to sign the second tenancy agreement. The increase in rent was discussed with the Tenant April 29, 2019.

The Witness testified as follows. He met with the Tenant on May 28, 2019 and was told rent would be \$1,300.00 or \$1,500.00 with hydro. He met with the Tenant and Landlords to sign the second tenancy agreement. The Landlords told the Tenant rent would be \$1,300.00 with the Witness as a tenant and the Tenant said this was no problem and that he understood. He paid the Tenant \$750.00 in rent each month. The Landlords did not do or say anything to the Tenant during the signing of the second tenancy agreement that could have been perceived as coercion. He and the Tenant agreed to the \$1,300.00.

In reply, the Tenant denied the parties discussed an increase in rent April 29, 2019. The Tenant testified that the Landlords did not say he could stay month-to-month once N.K. vacated.

Analysis

In relation to the dispute of a rent increase, Part 3 of the *Act* sets out what rent increases are allowed as well as guidelines for rent increases.

In relation to the compensation request, section 43(5) of the *Act* states:

- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Further, section 7 of *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

I find based on the written tenancy agreements that there were two separate tenancies involving the Tenant and Landlords. The first tenancy was with N.K. The second tenancy was with the Witness. The second tenancy agreement was not a continuation of the first tenancy agreement as it involved different parties and N.K. had vacated the rental unit. When the second tenancy agreement was signed, the first tenancy agreement ended. These findings are clear from the evidence. The Tenant did not dispute these points.

Part 3 of the *Act* does not apply to the change in rent from the first tenancy agreement to the second tenancy agreement because the second tenancy agreement was a new tenancy agreement between different parties. Given the second tenancy agreement was a new tenancy agreement with new parties, the Landlords were not bound by Part 3 of the *Act*. It was open to the Landlords to seek whatever rent amount they wanted in the second tenancy agreement. The Landlords sought \$1,300.00 in rent and were permitted to do so.

The Tenant is not entitled to compensation under section 43(5) of the *Act*.

I am satisfied the Tenant agreed to entering into a new tenancy agreement with the Witness as a co-tenant and agreed to pay \$1,300.00 in rent each month as he signed the second tenancy agreement.

The Tenant claims he was coerced into signing the second tenancy agreement. I do not accept this. The Tenant did not point to any actions or statements of the Landlords that could be construed as coercion. I am not satisfied based on the evidence provided that the Landlords forced the Tenant to sign the second tenancy agreement or threatened the Tenant in relation to signing the second tenancy agreement.

The Tenant described the coercion as not having a choice but to sign the second tenancy agreement. I do not accept that the Tenant did not have a choice. In the absence of being forced to sign the second agreement or threatened in relation to signing the second agreement, the Tenant could have chosen not to sign the second agreement. It may be that not signing the second tenancy agreement would have had

consequences under the *Act* that the Tenant did not like because N.K. had vacated the rental unit. But the Tenant chose to enter into a tenancy agreement with N.K. as a co-tenant and therefore exposed himself to the possible consequences under the *Act* of N.K. vacating the rental unit. It may be that the Tenant did not like the alternative of not signing the second agreement, but this does not mean he did not have a choice and is not the equivalent of coercion.

The Landlords did not breach the *Act*, regulations or tenancy agreement by seeking \$1,300.00 in rent for the second tenancy agreement given it was a new tenancy agreement with new parties and it was open to the Landlords to seek whatever rent they wanted. It was open to the Tenant to not sign the second tenancy agreement if he did not agree to it. The Tenant did sign the second tenancy agreement and agreed to pay \$1,300.00 in rent under the new tenancy agreement. The Tenant is not entitled to compensation of \$100.00 per month for eight months as there is no basis for such compensation.

Given the Tenant was not successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 30, 2020

Residential Tenancy Branch