



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, OLC, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the on February 24, 2020, under the Residential Tenancy Act (the “Act”), to dispute a rent increase, and for the return of their filing fee. The matter was set for a conference call.

The Tenant submitted an amendment to their application on April 30, 2020, adding a claim for an order for the Landlord to comply with the Act and a request for a monetary order for monetary loss or other money owed.

Section 64 of the *Act* and the Rules of Procedure required that the respondent must be served with a copy of the application to amend a Dispute Resolution proceeding. The Tenant testified their application to amend had been sent to the Landlords by email on April 30, 2020, a copy of the email was provided as evidence of service. The Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the “Emergency Order”) permits service by this method. Accordingly, I find that the Landlord had been served with the necessary documents.

Both Landlords and the Tenant attended the hearing on April 30, 2020, during that hearing both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant was the only party to attend the June 18, 2020, proceedings. During that proceedings, the Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the Landlords did not attend the June 18, 2020 hearing, service of the Notice of Dispute Resolution Hearing for this proceeding, was considered. As the June 18, 2020, hearing was scheduled as a result of an adjournment, and that it was the Residential tenancy Branch that served the new Notice of Dispute Resolution Hearing Document to the Landlords, I find that the Landlords had been duly served in accordance with the Act

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Was a rent increase issued that is above the amount allowed by law?
- Is the Tenant entitled to a monetary order for compensation for my monetary loss or other money owed?
- Should the Landlord be ordered to comply with the Act, regulation and/or the tenancy agreement?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this Tenants tenancy at this rental unit began on December 1, 2014. That the current rent in the amount of \$1,700.00 is due on the first day of each month, and the Tenant paid the Landlord a \$750.00 security deposit and the beginning of the tenancy.

The parties also agreed that ownership of the rental property had changed three times during this tenancy, and the Respondents in this application were the owners between June 2016 to October 2019. The Tenant submitted a copy if the tenancy agreement dated July 1, 2016 and signed between the Tenant and these Landlords (Respondents) into documentary evidence.

The Tenant testified that they still live at the rental unit in relation to this dispute and that they have no dispute with the current owner of the rental property.

The Tenant testified that when these Landlords purchased the rental unit on June 1, 2016, the Tenant and these Landlords signed a tenancy agreement and that this tenancy agreement was a one-year fixed term tenancy for a monthly rent of \$1,500.00 per month.

The Tenant testified that on June 1, 2017, they meet with the Landlords and their attorney, and that the Landlords had told them that the Tenant had to sign a new tenancy agreement with them or get out and that the Landlords had demanded \$500.00 more a month in rent.

The Tenant testified that they had been able to get the Landlords to reduce the demanded increased rent amount from \$500.00 to \$200.00 and had they all had verbally agreed to \$1,700.00 a month in rent. The Tenant testified that they remained in the rental unit paying the new rent amount for 28 months before they had realized that the Landlords could not have increased their rent that much and without proper notice. The Tenant testified that they believe the Landlord breach the Act and issued them an illegal rent increase on June 1, 2017. The Tenant is requesting the recovery of the amount they paid in the illegal rent increase, in the amount of \$5,800.00.

The Landlords agreed that they had negotiated a renewal of this tenancy on June 1, 2017, for a monthly rent of \$1,700.00, which was a \$200.00 increase from the rent charged in the previous fixed term tenancy agreement with this Tenant.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement signed between these parties, and I noted that the tenancy agreement was for a one-year fixed term tenancy, starting June 1, 2016, and ending May 31, 2017, and that this agreement included a vacate clause.

I find that the vacate clause contained in this tenancy agreement meant that the June 1, 2016 tenancy effectively ended on May 31, 2017, and that the tenant was required to either vacate the rental unit on that date or negotiate a new tenancy agreement with the Landlords to continue living in the rental unit.

I acknowledge that the legislation surrounding vacate clause was amended on December 17, 2017; However, I find that those amendments do not apply to this Tenancy, as this vacate clause in this tenancy became effective on a date before the legislative amendment to the Act had received royal assent.

I accept the agree upon testimony of these parties that the Landlords, the Landlord attorney and the Tenant had met on June 1, 2017, and negotiated a new verbal tenancy

agreement, that started that same day and would continue on a month to month bases for monthly rent amount of \$1,700.00.

I find that the rent increase restriction set out in section 42 of the *Act* did not apply to the June 1, 2016 tenancy as that tenancy had ended on May 31, 2017, in accordance with the *Act*.

As section 42 of the *Act* does not apply to the negotiation of rent for a new tenancy agreement, I find that the Landlords had the right to negotiate a higher rate of rent for this new tenancy agreement with this Tenant.

Accordingly, I find that there was no breach of section 42 of the *Act* by the Landlords when they negotiated this new tenancy agreement with this Tenant. Consequently, I must dismiss the Tenant's claim in its entirety, as they have failed to prove a breach of the *Act* by the Landlords on this matter.

In addition, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's application in its entirety.

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: June 18, 2020

Residential Tenancy Branch