



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes DRI FF

Introduction

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

- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary and Procedural Matters – Late Evidence of Applicant

Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant's evidence to be received by the respondent and the Branch not less than 14 days before the hearing. The tenant submitted additional evidence that was received by the Landlord only 2 days prior to the hearing. The tenant argued this evidence was just in response to the landlord's evidence which he received on May 6, 2020 (22 days prior to the hearing). The landlord argued the tenant's late submission in not just a response to the landlord's evidence but new submissions and evidence raising new information. The landlord submits the tenant had plenty time to respond to the landlord's submissions.

The tenant failed to show why this evidence was not available at the time the tenant's original evidence package was submitted or at least within a reasonable time after receiving the landlord's evidence. The tenant's late evidence submission was not accepted or considered in this decision. The tenant was permitted the opportunity to present his submissions orally.

Issues

Is the rent increase in compliance with the Act?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy originally began on November 1, 2013 with a monthly rent of \$1950.00. Over the years the parties entered into a series of fixed term agreement.

On November 27, 2016 the parties entered a 16 month fixed term tenancy at a monthly rent of \$2000.00. The agreement required the tenant to vacate at the end of the fixed term, March 31, 2018.

Subsequently, on March 24, 2018 the parties entered a new 12 month fixed term tenancy for the period of April 1, 2018 to March 31, 2019 at a monthly rent of \$2600.00. The agreement required the tenant to vacate at the end of the fixed term although the tenant wrote the words "no" in the box requiring his initials agreeing to vacate.

At the same time as the above agreement, the parties also entered into a 15 month fixed term tenancy for the period of April 1, 2019 to June 30, 2020 at a monthly rent of \$2750.00. This agreement also required the tenant to vacate at the end of the fixed term although the tenant again wrote the words "no" in the box requiring his initials agreeing to vacate.

The tenant argues the rent increases as per the agreements are contrary to the Act. The tenant argues since 2013 he has attempted to negotiate a long-term lease. The tenant testified the landlord had verbally agreed to a long term however before he went to sign the original lease the landlord wrote in a term for only 1 year. The tenant testified he was told he could renew for a longer term if everything goes well.

The tenant submits that problems started in 2018 when the landlord's parents were looking to move into a condo. The tenant submits that the landlord wanted to increase the rent significantly to offset the cost of the condo for the parents. The tenant argues he was pressured into signing the new leases as the lease was close to expiring and he wanted to keep his kids in the same school. After negotiations over several weeks he agreed to the new lease terms. The tenant submits he even initialed "no" in the portion of the agreement requiring his initial in agreement to vacate.

The landlord submitted e-mail correspondence between the parties in November/December 2016 immediately after the parties entered into the 16 month

lease at \$2000.00 per month starting in December 1, 2016. The landlord submits that this evidence shows that it was reiterated to the tenant that the landlord's parents were old with health issues so the landlord could not entertain the tenant's request for a long-term lease.

The landlord submits an e-mail dated January 13, 2018 by which the landlord advised the tenant they would not be renewing the lease as the landlord wanted their parents to move close by. The landlord submits it was the tenant who offered to pay more rent and suggested the landlord find a condo for their parents instead. The landlord submitted e-mail correspondence from the tenant dated January 13, 2018 in support of the above.

The landlord submits they advise the tenant of the price range of a suitable condo for the parents. The parties had back and forth negotiations before settling on the two consecutive fixed term leases. The landlord submits they even gave the tenant the option to extend the current lease for 3 months so the school year of the tenant's children would not be affected.

The landlord submits that the parties mutually entered into new fixed term leases which set aside the previous leases. The landlord submits that it was the tenant's idea to negotiate a contract at these prices so the landlord could find alternative accommodations for their parents.

Analysis

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulation, ordered by the Director or agreed to by the tenant in writing.

I find the evidence supports the tenant voluntarily entered into new fixed term leases with new rent amounts. I find these are not rent increases as contemplated under section 43 of the Act and even if they are, they were agreed to by the tenant in writing. I find the evidence supports that the tenant not only initiated the negotiations for the new fixed term leases but was also a voluntary participant. I reject the tenant's argument that he was pressured into agreeing to the new lease terms.

The tenant's application to dispute the rent increase is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

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: July 08, 2020

Residential Tenancy Branch