



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AYME PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, RP

Introduction

On October 8, 2020, the Tenants made an Application for Dispute Resolution seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “Act”) and seeking a repair Order pursuant to Section 32 of the *Act*.

Tenant A.M. attended the hearing, and J.S. attended the hearing as an agent for the Landlord. J.S. advised of the correct name of the owner of the rental unit. As such, the Respondent name has been amended on the Style of Cause of this Decision and on this Application to reflect the Landlord/owner of the rental unit. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on or around October 16, 2020 and J.S. confirmed that this package was received. However, the Tenant advised that she did not serve her digital evidence to the Landlord. Based on this solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the Tenant’s Notice of Hearing and evidence package.

Furthermore, as this evidence was served to the Landlord in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence, with the exception of the digital evidence, will be accepted and considered when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, the Tenant was asked which issue she wanted to put forth during the hearing. The Tenant chose to address the rent increase issue, so I advised the parties that this hearing would primarily address the

dispute of the rent increase. In addition, the Tenants' other claim would be dismissed and that they are at liberty to apply for this claim under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was there a rent increase that was implemented contrary to the *Act*?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2019, that rent was established at \$1,300.00 per month, and that it was due on the first day of each month. A security deposit in the amount of \$650.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Tenant acknowledged that she signed the tenancy agreement and that the addendum to this agreement not only indicated that any extra occupants must be approved by the Landlord, but that the Landlord could charge \$100.00 per month for each extra occupant. She stated that she did not understand this term and only signed the tenancy agreement as they were not in a very good position. She submitted that the rental unit was rented for her family, but her husband and sons left, so she was living in a four-bedroom house with only her and one son residing in it.

She stated that she received permission from the Landlord to have an occupant move into the rental unit from October 2019 to August 2020 and that she signed a mutual agreement to allow this occupant to reside in the rental unit for an extra \$100.00 per month. Given that there are four bedrooms in the rental unit and that there were only two people living in it before this first occupant moved in, it is her belief that this charge of \$100.00 per month was unethical and unfair. She stated that she had no choice but

to sign the mutual agreement if she wanted the extra occupant to move in. She collected \$500.00 per month from this occupant and paid the required \$100.00 per month to the Landlord.

When this occupant left the rental unit in August 2020, she brought in another occupant who lived there until November 2020. However, she did not seek permission from the Landlord to allow her to have this second occupant reside in the rental unit. She collected \$550.00 per month from this second occupant, and while she paid the Landlord \$100.00 per month, she refused to sign another mutual agreement with the Landlord for this second occupant. Since this second occupant left, she has been paying the original amount of rent to the Landlord.

J.S. advised that the tenancy agreement and addendum clearly state that the Tenants must seek approval for any extra occupants and that each occupant can be charged at a rate of up to \$100.00 per month. She stated that the Tenant rented a previous unit from her company and the tenancy agreement and addendum had the same terms with respect to the extra occupants. She confirmed that the Tenant approached her for permission for this first occupant, and once this person was screened and approved, a mutual agreement to add this person onto the tenancy at \$100.00 per month was signed by the parties. There was no mention of this being a rent increase in the mutual agreement.

She stated that the Tenant never requested permission about the second occupant, but simply emailed the Landlord an "FYI" that a new occupant would be moving in. She advised the Tenant that permission must be requested and granted prior to this person taking occupancy. While the Tenant claimed that she did not have a choice about signing the mutual agreement, J.S. refuted this statement. Per the addendum, if the Tenant wished to have an extra occupant in the rental unit, she would first have to seek permission, and then pay up to \$100.00 per month if an extra occupant was approved. Thus, the choice was the Tenant's to make if she wanted an extra occupant to reside in the rental unit, as the mutual agreement would officially document this addition.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenants' rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenants a notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the Regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenant in writing.

Moreover, Policy Guideline # 37 on the Residential Tenancy Branch website discusses rent increases in depth.

When reviewing the totality of the evidence before me, the undisputed evidence is that the tenancy agreement includes an addendum which states that the Tenants must first obtain permission from the Landlord to allow for any extra occupants to reside in the rental unit. Furthermore, the addendum indicates that the Tenants will pay up to \$100.00 per month for any approved occupants. Regardless of if the Tenant did not read or understand this in the tenancy agreement, this is clearly outlined.

When reviewing the mutual agreement, it is also evident to me that this is a document which pertains to the addition of an extra occupant to the tenancy at an agreed upon \$100.00 per month, and this is consistent with the addendum of the tenancy agreement. The mutual agreement clearly stated that "The Tenants agree to pay an additional \$100.00 per month for the additional occupants as per clause 4 on page 1 of the addendum."

Given this wording, I find it dubious that the Tenant signed this mutual agreement on November 15, 2019 agreeing to the extra occupant charge but did not understand that this was not a rent increase. Together with the addendum to the tenancy agreement, I do not accept the Tenant's assertions that this document could be misconstrued as a rent increase. I also do not accept that because the Tenant did not read or understand this term before she signed the tenancy agreement, that it is not enforceable.

Based on the totality of the evidence before me, I am not satisfied that the Tenant has presented compelling or persuasive evidence to support her claim that the Landlord increased the rent illegally. Rather, I find that this mutual agreement simply documents that an occupant has been permitted, by the Landlord, to reside in the rental unit and

that the cost of this is \$100.00 per month, pursuant to the tenancy agreement. As such, I do not find that this would constitute a rent increase under the *Act* and I dismiss the Tenant's claim on this issue in its entirety.

Conclusion

The Tenant's Application to dispute a rent increase is dismissed without leave to reapply.

The Tenant's Application with respect to a repair Order is dismissed with 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: December 23, 2020

Residential Tenancy Branch