



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$15,500.00 for what the tenant describes as an overpayment of rent between 2016 and 2020, plus the filing fee.

The tenant, an agent for the tenant, SJ (agent) the landlord, an agent for the landlord, UZ (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to answer questions regarding a signed Mutual Agreement, which I will refer to in detail below. A summary of the affirmed testimony is provided below and includes only that which is relevant to the hearing.

A witness for the landlord, AK (witness) attended the hearing but was not called to testify. Words utilizing the singular shall also include the plural and vice versa where the context requires. As neither party raised any concerns regarding the service of documentary evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue to be Decided

- Has this matter been resolved already by way of a mutually settled agreement signed between the parties?

Background and Evidence

A copy of a signed Mutual Agreement to End Tenancy with an addendum, of which were dated June 27, 2020 (Mutual Agreement) was submitted in evidence. The parties signed that Mutual Agreement, and in part that mutual agreement addendum reads as follows:

7. Both landlord and tenant mutually agreed that all previous disputed between tenant and landlord are void and non of the party can reapply.

[Reproduced as written]

The Mutual Agreement was signed by both parties. The previous decision was dated June 17, 2020, and the Mutual Agreement was signed ten days later on June 27, 2020.

Even though the tenant was granted leave to reapply for a rent increase issue in the June 17, 2020 decision, I find the tenant surrendered that right by signing the Mutual Agreement between the parties dated ten days later on June 27, 2020.

As a result, the parties were advised that I find this matter was already concluded by way of a Mutual Agreement, which I find is enforceable under the Act.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for compensation – The tenant has claimed a total of \$15,500.00 for what the tenant describes as an overpayment of rent between 2016 and 2020. I have carefully considered the Mutual Agreement signed by the parties and find that the

tenant is not entitled to compensation under the Act as I find that both parties had the right to rely on the terms of the signed Mutual Agreement which I find both parties signed as of June 27, 2020.

Furthermore, section 7(2) of the Act applies and states:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[emphasis added]

I find the tenant failed to comply with section 7(2) of the Act by allowing their claim related to additional rent increases to increase between 2016 and 2020, and eventually filing this claim on December 27, 2020. In future, the tenant is reminded to not wait 4 years before claiming compensation under the Act. Based on the above, I find the tenant's claim fails in its entirety and is **dismissed without leave to reapply** due to insufficient evidence and the signed Mutual Agreement before me.

As indicated in the hearing, if the tenant does not wish to be bound by a Mutual Agreement, the tenant had the ability not to sign the Mutual Agreement. The tenant agreed they signed the Mutual Agreement when asked during the hearing.

The filing fee is not granted as the application was dismissed.

Conclusion

The tenant's application is dismissed without leave to reapply. The filing fee is not granted as the application was dismissed. This decision will be emailed to both parties as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 3, 2021

Residential Tenancy Branch