



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for monetary compensation or other money owed, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties further confirmed that they were not making any unauthorized recording of this hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for loss or other money owed?

Background and Evidence

The parties initially entered into a tenancy agreement that commenced on February 1, 2016. Rent in the amount of \$1,450.00.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenant. The tenancy ended on January 31, 2020.

The tenant testified that on December 31, 2018, they entered into a new tenancy agreement for a fixed term that would take effect on February 1, 2019, and they agreed

that the rent would be the amount of \$1,510.00 per month. The tenant stated that the landlord did not give them three months notice of the rent increase. The tenant stated they did not raise this issue at any time during the tenancy.

The landlord testified that the parties began to negotiate a new tenancy agreement in early December 2018, and they agreed rent would be \$1,510.00 and the tenancy was a fixed term commencing February 1, 2019 and was to expire July 31, 2019.

The landlord testified that they entered in the current tenancy agreement in July 2019 which took effect on August 1, 2019, and was to expire on December 31, 2020, and rent remained the same amount of \$1,510.00.

The landlord testified that the rent was paid every month and this issue, regarding a rent increase was never raised during the tenancy.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant the burden of proof to prove their claim.

The tenant is of the position the landlord failed to increase the rent in accordance with the rent increase provisions of the Act. Section 43(5) provides that "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". The issue for me to determine is whether the landlord unlawfully imposed a rent increase.

In this case, the tenant had not received a rent increase in the allowable of 3.7% (\$53.64) in 2017, which would have increased the rent to \$1,503.64 and did not receive the allowable rent increase of 4% (\$60.00) in 2018, which would have increased the rent to the amount of \$1,563.64.

In December 2018, the parties negotiated a new tenancy agreement and the tenant agreed to pay the rent of \$1,510.00 and received the benefit of a fixed term agreement. I find this was not a rent increase that was imposed by the landlord forcing their

authority under the Act. Rather, I find this was a fairly negotiated agreement based on the circumstances at the time. I find this was a new tenancy agreement that replaced the former tenancy agreement. I find the tenant has failed to prove a violation of the Act, by the landlord when they entered into a new tenancy agreement willingly, in accordance with section 13 of the Act.

While the tenant raised the issue on not receiving three months notice of the rent increase and that it was not in the proper form. I find there was not a rent increase imposed under section 42 of the Act. Rather, I find the parties entered into a new tenancy agreement negotiated between the parties and the tenant was not at a disadvantage as they agreed in the tenancy agreement the date rent would be paid.

I find it would be unfair, and prejudicial to the landlord, and contrary to section 13 of the Act, to set aside a fairly negotiated tenancy agreement. I also find it would be unreasonable to set aside the tenancy agreement when the tenant did not raise this issue at any time during their tenancy, and even entered into a subsequent new contract in July 2019 where rent remained the same.

Based on the above, I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's claim without leave to reapply. As the tenant was not successful with their application I decline to award the cost of the filing fee.

Conclusion

The tenant's application for a monetary order is dismissed.

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: May 19, 2021

Residential Tenancy Branch