



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant applies for an order pursuant to s. 62 of the *Residential Tenancy Act* (the “*Act*”) that the Landlord comply with the *Act*, Regulations, and/or tenancy agreement. The Tenant also seeks return of their filing fee.

T.B. appeared on her own behalf as Tenant. V.G. and T.S. appeared on their own behalf as Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advised that she served the Notice of Dispute Resolution and her evidence on the Landlord by way of registered mail sent on November 11, 2021. The Landlord acknowledges receipt of the Tenant’s application materials. I find that the Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Landlord to have received the Tenant’s application materials on November 16, 2021.

The Landlord advised that he served the Tenant with his responding evidence on December 10, 2021 by personally serving it on the Tenant and by emailing it on December 10, 2021. The Tenant acknowledges receipt of the Landlord’s evidence. I find that the Landlord served his responding evidence on the Tenant in accordance with s. 89 of the *Act* on December 10, 2021.

Issue(s) to be Decided

- 1) Should the Landlord be ordered to comply with the Act, Regulations, and/or tenancy agreement?
- 2) Is the Tenant entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the Tenant took occupancy of the rental unit on May 1, 2017. Monthly rent is due on the first day of the month and is currently \$1,218.00 effective on January 1, 2022. The rent increase had been subject to the Tenant's dispute, however, the parties confirmed that this issue has been resolved and both confirmed the above amount. The parties further confirmed that the Landlord holds a security deposit of \$625.00 in trust for the Tenant. The Landlord indicates that they recently purchased the residential property and took possession on May 1, 2021.

A written tenancy agreement signed on March 24, 2021 is put into evidence by the parties.

The Tenant's dispute also related to the Landlord's request for a pet damage deposit. Again, this matter has been resolved by the parties before the hearing and the Landlord confirmed they do not hold a pet damage deposit for the Tenant.

The Tenant says the sole issue is related to a demand letter sent by the Landlord on October 21, 2021 in which the Landlord asks for a rent increase of \$150.00 per month based on the Tenant having an additional occupant based on clause 8 of the tenancy agreement. The letter makes a demand for \$150.00 per month back to May 1, 2021, the day in which the Landlord took possession.

The Tenant says that her daughter has been living in the rental unit since May 1, 2017. The Tenant indicates that she never hid that her daughter lived with her.

The Landlord says that the Tenant did not mention that an additional occupant was living in the rental unit. The Landlord says that when the residential property was

purchased, he was led to believe that the Tenant lived in the rental unit alone and that her daughter would visit two days a week. The Landlord obtained this information from his realtor during the purchase process and provides an email from his realtor dated October 20, 2021 as confirmation of the information. It does not appear the parties spoke with one another on the matter of the rental unit's occupants prior to the Landlord's purchase of the residential property. At the hearing, the Landlord acknowledged that the Tenant's daughter has been living there since at least May 2021 based on the Tenant's admission of this fact to them in October 2021.

The Tenant says that the written tenancy agreement put into evidence was signed with the previous owner's property manager. The tenancy agreement was put together in contemplation of the previous owner listing the residential property for sale. The Tenant says that she discussed whether her daughter needed to be listed in the tenancy agreement as an occupant when signing the tenancy agreement but was told by the property manager that that was not necessary.

The parties confirmed that the Landlord has threatened notices to end tenancy based on the issue of the additional occupant. However, none have been issued.

Analysis

The Tenant seeks an order that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

The Tenant argues that the Landlord is demanding an additional rent increase that is in contravention with the tenancy agreement and Part 3 of the *Act*.

I find that the Tenant's daughter has been living with the Tenant as an occupant since May 1, 2017 based on the undisputed evidence on the parties. The Tenant's evidence on this point was not directly disputed by the Landlord. The Landlord does not say the Tenant's daughter moved in after the new tenancy agreement was signed. Indeed, during the hearing, the Landlord acknowledged that the Tenant's daughter has been living in the rental unit since at least May 1, 2021.

The Landlord's whole argument is based on their misunderstanding of the tenancy when they purchased the residential property. They were led to believe by their realtor that the Tenant lived in the rental unit with her dog. The Landlord's realtor obtained that information from the previous owner's realtor. The truth of the matter only revealed itself

to the Landlord after they took possession of the residential property. The Landlord's misapprehension of the details of the tenancy are entirely borne from faulty information shared between realtors during the sale of the property and the Landlord's failure to ascertain the truth of the matter prior to taking possession.

The Landlord argues that the tenancy agreement does not specify that there is an occupant in the rental unit with the Tenant. I do not find this point determinative. I accept the Tenant's undisputed evidence that her daughter moved into the rental unit on May 1, 2017. The tenancy agreement was updated in March 2021 and the Tenant explained that the failure to include the daughter as an occupant in the tenancy agreement was the result of the previous property manager saying it was unnecessary to do so. There is no apparent deception here on the part of the Tenant and I accept her evidence that the issue was raised by the Tenant with the previous property manager and the daughter was not listed due to the property manager saying it was unnecessary. Whether the Tenant's daughter has occupied the rental unit since May 1, 2017 is a factual issue. A tenancy agreement, signed nearly four years after the tenancy began, does not change the fact that daughter is not a new occupant and has been living there since May 1, 2017, a fact which I accept based on the parties' undisputed evidence.

As the Tenant's daughter has occupied the rental unit since May 1, 2017, I do not find that clause 9 of the tenancy agreement is triggered under the circumstances. Accordingly, I order that the Landlord comply the tenancy agreement and with the rent increase provisions of Part 3 of the *Act* and cease further demands for additional rent based on the occupancy of the Tenant's daughter.

Conclusion

The Tenant has established that her daughter has been an occupant since May 1, 2017. I order pursuant to s. 62 of the *Act* that the Landlord comply the tenancy agreement and with the rent increase provisions of Part 3 of the *Act* and cease further demands for additional rent based on the occupancy of the Tenant's daughter, who has reside in the rental unit since the tenancy began.

Given that the Tenant was successful in her application, she is entitled to the return of her filing fee. Pursuant to s. 72(1), I order that the Landlord pay the Tenant's filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenant withhold \$100.00 from rent due to the Landlord on **one occasion** in full satisfaction of their filing fee.

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: January 18, 2022

Residential Tenancy Branch