



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase and seeking to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and the tenant was accompanied by his father who advocated for the tenant.

The hearing did not conclude on the first scheduled date, and due to issues with the tenancy agreement, I adjourned the hearing to allow the parties an opportunity to discuss settling the claim. However, the parties did not come to an agreement.

The tenant and the tenant's father each gave affirmed testimony. Both landlords also gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that rent has been increased contrary to the law?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 1, 2021 and reverted to a month-to-month tenancy after August 31, 2022. Rent in the amount of

\$800.00 was payable on the 1st day of each month, and there are no rental arrears. On July 24, 2021 the landlord collected a security deposit from the tenant in the amount of \$400.00. A copy of the tenancy agreement has been provided as evidence for this hearing. The tenant was living in the rental unit with another person, and the 2 tenants had separate leases with the landlord.

The tenant further testified that he gave notice to end the tenancy on May 28, 2022 with an effective date of vacancy of August 31, 2022 by text message. However on June 27 the tenant decided to stay and messaged the landlords stating that the tenant changed his mind and wanted to continue the rental. The landlords responded with lots of information, and saying that the tenant would have to sign another 1 year lease because of another tenant's new application to rent. The landlords also informed the tenant of the adjustment in rent of \$950.00 per person, being \$1,900.00 per month for the 2 tenants. Another tenancy agreement was entered into by the tenant and the tenant's roommate and the landlords for a fixed-term to begin on September 1, 2022 reverting to a month-to-month tenancy after August 31, 2023, a copy of which has also been provided for this hearing. It names 2 tenants, the tenant in this application and another tenant, who is not named in the application, and both tenants still reside in the rental unit. The tenant paid an additional \$75.00 security deposit to the landlords.

The tenancy agreement states:

3. RENT (please fill in the information in the spaces provided)

a) Payment of Rent: The tenant will pay the rent of \$950.00 each (check one) ___ day ___ week x month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) 1st day of each (check one) ___ day ___ week x month subject to rent increases given in accordance with the RTA.

The tenant testified that prior to signing the second tenancy agreement the tenant was informed of the terms and agreed to it and signed the lease, aware that it was a new lease. The tenant also knew that the landlords were arriving from Edmonton for an open house.

The tenant's father, who advocated for the tenant testified that the dispute between the parties comes down to whether it was a new lease under the Residential Tenancy Policy Guidelines or a continuation of the previous tenancy. The dispute also relates to whether the notice to end the tenancy by the tenant was a proper notice under the law.

The first landlord (AS) testified that 3 months prior to the end of the first fixed-term, the landlord asked the tenants who lived there at that time, and the tenant's father if they wanted to continue their lease.

Rent for the tenant in this application was always paid by his dad and most correspondence was through him. The tenant's father texted the landlord saying that the tenant would move out on August 31. On June 25, 2022 the landlord put up an advertisement of \$1,900.00 per month and a copy of the advertisement has been provided for this hearing, and texted the tenant's father seeking access for an open house in July. On July 27, 2022 the tenant found out about the advertisement through his friend, and the tenant texted the landlord asking if it was still available, and the landlord replied that it was available. The tenant said he'd like to sign a lease and the landlord listed terms and conditions and informed the tenant that it was a 1 year term. The rental unit is a 2 bedroom unit, and the landlords could have rented it to anyone.

The original roommate moved out on August 31, 2022, and he and the tenant were not known to each other, so each had signed a separate tenancy agreement. Their rent was \$800.00 per month each and the landlords collected rent separately from them.

The landlords had placed the advertisement and went to the rental unit for an open house. The tenant stayed and his friend moved in, and they both still live there. The landlords collected a security deposit of \$475.00 from each of the 2 tenants.

The second landlord (KS) testified that the landlords interviewed the tenant who said his friend saw the advertisement online. The tenant had fully intended to move out. Together, they would sign the lease to rent the unit, and the intention was for it to be a new lease.

During the course of the hearing, I questioned the landlords about the second tenancy agreement which specifies rent in the amount of \$950.00. Neither the landlords nor the tenant nor the tenant's father had noticed that the tenancy agreement specifies "\$950.00 each month," but all parties believed the contract was for "\$950.00 each tenant."

Analysis

In this case, it is very evident that none of the parties noticed that the tenancy agreement specifies \$950.00 each month, but all parties agreed that the intention was \$950.00 for each of the 2 tenants under a new tenancy agreement that names the tenant and an additional tenant, who did not reside in the rental unit during the first term.

The tenant's father, in his testimony, questioned whether or not the notice to end the first fixed-term tenancy was proper notice under the law. I find that it is; a tenant must give written notice to vacate and if the landlord accepts that, the tenancy ends on the effective date of the tenant's notice. That is what happened in this case, and the landlords advertised the rental unit for rent.

The tenant's father also referred to the Residential Tenancy Policy Guidelines, and #37 deals with Rent Increases. It states that:

“Under section 36 of the *Manufactured Home Park Tenancy Act* (MHPTA) and section 43 of the *Residential Tenancy Act* (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (“annual rent increase”)
- agreed to by the tenant in writing (“agreed rent increase”)
- ordered by the director on an application in the circumstances prescribed in the regulations (“additional rent increase”)

The tenant agreed to a new tenancy agreement for a new amount of rent and both tenants have been paying \$950.00 per month since the second tenancy agreement was signed.

The Policy Guideline also specifies that if a tenant agrees in writing, the landlord is still required to serve a Notice of Rent Increase. However, that does not apply to new tenancy agreements entered into by the parties. If the tenant agrees in writing to an amount that is more than the amount permitted by law, then the landlord must also serve the Notice of Rent Increase. In this case, the tenant and another person entered into a new contract with the landlords. That is not an unlawful rent increase, but a new contract, whether or not one or more of the tenants actually moved out. The landlords advertised once receiving the tenant's notice to end the tenancy, and the tenant changed his mind wanting to stay with a new roommate and the new tenancy agreement was signed in those terms.

Regardless of whether the new tenancy agreement is for \$1,900.00 per month or \$950.00 per month, I am not satisfied that the tenant has established that rent has been increased contrary to the law. The tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: November 22, 2022

Residential Tenancy Branch