



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 an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

As both parties were present, service of documents was confirmed. The tenant testified that she served the landlord with a copy of the Notice of Dispute Resolution Proceedings package at her residential address via registered mail on June 10, 2022 and provided a tracking number, recorded on the cover page of this decision. During the hearing, with the consent of both parties, I accessed the Canada Post tracking system and noted that package was delivered on June 20, 2022.

The landlord testified that she mistook this Notice of Dispute Resolution Proceedings with another one she has regarding a different set of tenants. It was only after examining the file numbers that she discovered the two disputes were different. She contacted the Residential Tenancy Branch who advised her which tenant filed this dispute.

Based on the evidence before me, I deem the landlord sufficiently served with the Notice of Dispute Resolution Proceedings package on June 20, 2022 in accordance with section 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Can the tenant recover the filing fee?

Background and Evidence

The tenant gave the following testimony. The tenancy began in June 2014 with rent set at \$800.00 per month. The landlord tried to raise it by \$25.00 in 2016, however the tenant reminded the landlord was more than allowable under the regulations and it was only raised by \$20.00.

It was raised a second time to \$850.25 some time later, the tenant does not recall when. On July 1, 2020, the landlord raised the rent by an additional \$100.00 to \$950.25 per month. The tenant testified she knew 100% that it was greater than the amount allowable under the Regulations, as rent increases were frozen during the pandemic. Despite this, the tenant paid the additional rent because it was next to impossible to find another place during Covid and she was afraid of having to move out.

The tenant testified that some time prior, the landlord had tried to evict her by saying she was going to move in herself but they came to an agreement that the tenant could stay an additional 10 months. A text message dated July 13th from the landlord states, *"I thought about it and you have to sign a new lease with an agreeable move out time so that I can coordinate moving back in I will give you 11 more months and I want you to pay \$100 mor rent..."*

The landlord gave the following testimony. The tenant signed a new fixed term tenancy agreement with her on August 1, 2020. The landlord testified she has a copy of the tenancy agreement before her and that both she and the tenant signed it. It states the tenancy begins on August 1, 2020 and ends on June 30, 2021 with rent set at \$950.25 per month. Both parties initialled part 2 of the form indicating the tenant must move out of the rental unit on June 30th pursuant to section 13.1 of the Residential Tenancy Regulations. No copy of the tenancy agreement was provided as evidence.

The tenant did not dispute that she signed another tenancy agreement on August 1st, however she testified that the landlord did not provide her with a copy of it. The tenant

acknowledges she could have taken a photo of it. She doesn't remember if the rent shown on the new tenancy agreement was set at \$950.25. The landlord said she could move out early, and she did on May 1, 2021 rather than June 1, 2021. The return of the security deposit was disputed and the tenant has a monetary order against the landlord.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

In evidence, the tenant provided the text message from the landlord where the landlord asks the tenant to sign a new tenancy agreement (lease) with rent set \$100.00 higher for 11 months. I find credibility in the landlord's testimony that the parties entered into a new fixed term tenancy agreement on August 1, 2020 with rent set at \$950.25. The landlord clearly testified that both she and the tenant signed the new agreement and that it included a pre-determined move out date of June 1, 2021. During the hearing, the tenant did not fully dispute this testimony, only indicating she never got a copy of it.

As of the first day of the new tenancy agreement, the terms of a previous tenancy agreement are superseded by the new one and the terms of the previous tenancy agreement are automatically cancelled. Therefore, the amount of rent reflected in the old agreement is no longer what the parties agree to. Although the tenant could have refused to sign the new tenancy agreement, she placed her signature on the new tenancy agreement dated August 1st and displayed a meeting of the minds with the landlord, a legal doctrine known as "*consensus ad idem*".

The tenant testified that she knew the landlord couldn't raise her rent during the pandemic but agreed that she would pay it because she was afraid of not being allowed to remain living in the rental unit. I find that the tenant has benefitted from the terms of the new fixed term tenancy agreement dated August 1, 2020 by knowing her tenancy would not be jeopardized for the following 11 months.

I find the tenant and the landlord freely entered into a contract whereby the tenant would pay rent in the amount of \$950.25 per month from August 1, 2020 until June 1, 2021. In signing the new tenancy agreement, the terms of the previous tenancy agreement were automatically cancelled, whether the tenant understood it or not. This is not a situation where the landlord raised the tenant's rent by \$100.00 a month contrary to the Act, the

Regulations or any restrictions brought on by any Ministerial Order. As such, I dismiss the tenant's application seeking compensation for increased rent without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is 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: February 09, 2023

Residential Tenancy Branch