



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Code MNDCT, DRI, FFT

Introduction

This hearing was convened to hear the Tenants' Application for Dispute Resolution made on November 21, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order related to a rent increase; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing. The Landlord was represented at the hearing by CB and JW, agents. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, GS testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. CB acknowledged receipt on behalf of the Landlord. In addition, CB testified that the Landlord's documentary evidence was served on the Tenants by registered mail. GS acknowledged receipt on behalf of the Tenants.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to an order related to a rent increase?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed that a fixed term tenancy began on January 1, 2021 and continued to December 31, 2022. The tenancy continues on a month-to-month basis. The parties agreed the Tenants paid a security deposit of \$2,750.00 and a pet damage deposit of \$2,750.00, which the Landlord holds.

The parties disagree with respect to the amount of rent due. The signed tenancy agreement submitted into evidence describes rent of \$5,500.00 per month from January 1 to December 31, 2021, increasing to \$6,500.00 per month from January 1, 2022 to December 31, 2022.

The Tenants also dispute a Notice of Rent Increase dated September 21, 2022, which purports to increase rent from \$6,500.00 per month to \$6,630.00 per month, a 2% increase, effective January 1, 2023. The Tenants acknowledged this rent increase has not been paid to the Landlord and that they have continued to pay rent of \$6,500.00 per month.

On behalf of the Tenants, GS submitted that the rent increase included in the tenancy agreement is an attempt to contract out of the rent control provisions of the Act, contrary to the Act. As a result, the Tenants submit that the Notice of Rent Increase is ineffective to increase rent.

In reply, CB testified that the rate for the rental unit was \$6,500.00 per month but that the Tenants were offered a lower rate during the first year of the fixed term because of the uncertainty in the rental market occasioned by Covid-19.

CB also testified the Tenants were aware of the reason for the reduction. CB testified that the amount of rent due was confirmed in an email from CB to GS dated December 17, 2020, and noted that the Tenants signed the tenancy agreement on December 21, 2020.

CB testified that the Tenants understood the terms of the tenancy agreement and have paid \$6,500.00 per month since January 1, 2022. CB submitted that the Tenants should not be granted a rent reduction, having paid the agreed-upon rent for most of the tenancy.

The Landlord also submitted an email exchange dated January 5, 2022 into evidence. In it, CB states that the change in rent is not an increase. In reply, GS suggests the Landlord was trying “to skirt the rent provisions of the statute.”

The Tenants also seek to recover the filing fee paid to make the application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 43(1)(c) of the Act confirms that a landlord may impose a rent increase only up to an amount agreed to by a tenant in writing.

In this case, I find that the amount of rent due during the fixed term was confirmed in an email from CB to GS dated December 17, 2020, and that the parties signed the written tenancy agreement on December 21, 2020. I accept that the tenancy agreement reflects the parties’ understanding with respect to the amount of rent due during the fixed term. I also accept that the lower rate in effect from January 1 to December 31, 2021 reflected a concession for the first year of the tenancy. I find that the rent increase was not an attempt to avoid the rent increase provisions of the Act.

Further, as the parties agreed to the rent increase in writing, I find that the timing and notice requirements of section 42 of the Act are not engaged.

Even if I had found the increase did not comply with the rent increase provisions of the Act, I would have relied on the principle of estoppel, alluded to during the hearing by CB. Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. In this case, there is no dispute that the Tenants signed the tenancy agreement, which provided more than 12 months' notice of the increase. Further, the Tenants paid rent of \$5,500.00 per month from January 1 to December 31, 2021, and have continued to pay \$6,500.00 per month from January 1, 2022 to present. As noted above, the Tenants did not make their application to dispute the increase until November 21, 2022, near the end of the fixed term. Although the Tenants raised the issue in an email dated January 5, 2022 – roughly ten months before the application was made – they took no action at that time. In this case, by paying the agreed-upon rent throughout the tenancy and by failing to make an application for dispute resolution within a reasonable time, I would have found that the Tenants are estopped from disputing the rent increase.

Considering the above, I find that the increase in rent during the fixed term was agreed to by the Tenants in writing as permitted under the Act. Therefore, the Tenants' request for a monetary order for an alleged overpayment of rent is dismissed, without leave to reapply.

Further, I find that the Notice of Rent Increase submitted into evidence was effective to increase rent to \$6,630.00, effective January 1, 2023. The Tenant's application to dispute the Notice of Rent Increase, which complies with the provisions of the Act, is dismissed without leave to reapply.

As the Tenants have not been successful, I dismiss their request for recovery of the filing fee, without leave to reapply.

Conclusion

The Tenants' 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 14, 2023

Residential Tenancy Branch