



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, DRI-ARI-C, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation for a monetary loss or other money owed, to dispute an additional rent increase for capital expenditures, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the filing fee.

The tenant, the landlords, and the landlords' agent/son, GV, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's application and evidence and the tenant confirmed receipt of the landlords' evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the tenant listed multiple claims. I find the most urgent matters to consider are the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and to dispute an additional rent increase. I find the monetary claim is not sufficiently related to the primary issues. I will, therefore, only consider the tenant's request for orders against the landlords. The balance of the tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

As an additional procedural matter, it was clear from the tenant's application that their intention was to file a dispute of a regular rent increase. I determined this from the tenant's statement that they had not received a rent increase for capital expenditures. I elected to amend the tenant's application to a dispute of a regular rent increase.

The parties were informed at the hearing.

Further, the tenant's digital evidence was not labeled with a description or identified as required by the Rules. Additionally, the evidence was filed in random order, which I found caused the evidence to be disorganized. Despite the breaches of the Rules, the evidence was reviewed.

Issue(s) to be Decided

Is the tenant entitled to the order sought as noted above and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on August 1, 2017, for a monthly rent of \$2,250, according to the tenant, and the current monthly rent is \$2,550.

Dispute of a rent increase –

In their application, the tenant wrote as follows:

Rent increase with out notice since 2017 Also was a damage deposit increase of 75\$ 2018 you will notice that in the lease from 2017-2018

The tenant testified to the following:

Dispute of a rent increase –

The landlords have increased the monthly rent each year by way of having the tenant sign a new tenancy agreement with the increased rent, rather than through the legally required notice of rent increase. The tenant's application was filed when the landlords sent another tenancy agreement to sign, on February 1, 2023, which listed an increased rent and 10 terms in an addendum. The landlord served a notice of rent increase to the tenant and a new tenancy agreement on January 31, 2023. The tenant refused to sign the new tenancy agreement.

Evidence filed by the tenant included past written tenancy agreements, notices to increase the rent, the latest notice of rent increase dated January 2, 2023, for an increased rent beginning May 1, 2023, and text message communication between the parties.

In response, the landlord, through their agent, stated that the tenant refused to sign the new tenancy agreement, so they served them with the notice of rent increase on the RTB form.

Evidence filed by the landlord included signed tenancy agreements, signed notices of rent increase, bank statements, and rent rolls.

Request for the landlords' compliance with the Act –

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant submitted that they just want the landlord to provide them with the proper notice of entry prior to coming into the rental unit. The tenant also said they want the landlord to serve any notices as required, not, for instance, to their 13 year old daughter, which happened recently.

The tenant submitted they had not agreed to be given notice or service of documents by email.

In response, the landlord said going forward, they will provide the proper notices of entry.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Dispute of a rent increase –

After a review, I find the tenant submitted insufficient evidence of when the tenancy began. For instance, at the hearing, the tenant said the tenancy began August 1, 2017, and documentary evidence suggested the tenancy began in 2015. The documentary evidence I find was inconsistent with the tenant's statement that the monthly rent at the beginning of the tenancy was \$2,250. Various signed tenancy agreements showed a monthly rent of \$2,500. Apart from that, the tenant's evidence was unlabeled and unorganized, and therefore, unclear.

While the evidence shows the parties signed various, fixed-term tenancy agreements, the agreements provided that the tenancy continued at the end of the fixed-term on a month-to-month basis. The tenancy agreements did not provide a clause that the tenant must vacate at the end of the fixed-term, and I find it was the tenant's choice to sign new tenancy agreements in various years, as the original tenancy agreement would still be effective if not for the subsequent signed tenancy agreements.

Apart from that, the tenant signed and agreed to a monthly rent of \$2,500 in the tenancy agreement for a tenancy beginning January 1, 2021, for a fixed-term through January 1, 2022.

For these reasons, I find the monthly rent at the time the tenant filed their application was \$2,500, which is reflected on the latest, signed tenancy agreement between the parties.

The undisputed evidence is that the tenant received a notice of rent increase in January 2023, from the landlords on the current RTB form, which increased the monthly rent of \$2,500 to \$2,550, effective May 1, 2023. I find this notice was completed by the landlord as required and gave the tenant at least 3 full months advance notice and was in the allowable amount of 2%. For this reason, I find the tenant owed the increased

monthly rent of \$2,550 on May 1, 2023. I find the new monthly rent is now established at \$2,550.

As the rent increase was in dispute in this hearing, if the tenant did not pay this amount on May 1, 2023, I authorise the tenant to pay the May rent deficiency of \$50 with their next monthly rent payment of \$2,550, due June 1, 2023.

I inform the parties that this tenancy is now on a month-to-month basis and there is no requirement that a new tenancy agreement be signed. I order that the terms of the latest signed tenancy agreement are in force and effect for this tenancy. The attempt to change the tenancy agreement through additional terms on the addendum are not valid, as a party may not unilaterally alter terms of a written tenancy agreement.

Request for the landlords' compliance with the Act –

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The notice of entry may be served in any manner listed in section 88 of the Act and must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

The tenant is informed that if the landlord has provided sufficient notice of entry, the landlord may enter the rental unit whether the tenant is present or not.

I order the landlord to comply with section 29 of the Act, without making a finding that they have violated the Act.

As the tenant's application was at least partially successful, I grant the tenant recovery of the filing fee of \$100.

I authorize the tenant a one-time rent reduction in the amount of \$100 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Conclusion

Findings were made on the current monthly rent owed by the tenant and the landlord was ordered to comply with the requirements of the Act as to notices of entry to the rental unit, without making a finding that they failed to do so.

The tenant's monetary claim is dismissed, with 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 29, 2023

Residential Tenancy Branch