



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 0, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to recover the filing fee for this application - Section 72; and
2. Other.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions. The details of the Tenant’s application indicate that the Tenant primarily seeks an order to cancel a notice to end tenancy. The Tenant confirmed this claim.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on May 15, 2014 for a fixed term to end May 14, 2015. The Parties agreed to extend the end term to June 30, 2015. Rent of \$1,390.00 was originally payable monthly on the 15th day of each month. On the extension of the tenancy agreement the rent was raised to \$1,418.00. The Tenants paid the increased rental amount for half of May and all of June and July 2015. At the outset of the tenancy the Landlord collected \$1,390.00 as a security deposit.

The Tenant states that the Landlord has sent an email to the Tenants ending the tenancy for June 30, 2015. The Tenants argue that the fixed term tenancy does not require the Tenants to move out of the unit at the end of the term and that the tenancy reverts to a month to month tenancy at the end of the fixed term. The Tenants states that no move-out was agreed to for the end of the fixed term and that the Landlord wanted another fixed term agreement at the end of the fixed term. The Tenant claims an order cancelling the notice to end tenancy.

The Landlord states that despite clear words indicating a move-out date, the Parties orally agreed that the Tenants would move out of the unit and that the extension agreement was really a mutual agreement to end the tenancy with a move-out date of June 30, 2015. The Landlord also argues that by virtue of sections 56 and 42(b) of the tenancy agreement the Tenants are required to move out of the unit at the end of the term. Is it noted that these sections are under the headings "Repairs" and "Care and Use of Property". The Landlord states that it was clear when signing both agreements that the Tenants would move-out of the unit at the end of the term. The Landlord states that as he lives out of country he wants security with the rental unit and only wants fixed term agreements. The Landlord states that taken together, the verbal agreement and additional terms of the tenancy agreement support the intention of the Parties to have the Tenants move out on June 30, 2015. The Landlord states that the other option for the Tenants was to enter into another fixed term agreement.

The Landlord states that the rent increase should be allowed under the Act as the Landlord gave the Tenants three months' notice of the rent increase by email.

Analysis

Section 44 of the Act provides that a tenancy only ends if, inter alia, the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. This section provides that a landlord may otherwise end a tenancy under certain circumstances. An oral

agreement cannot change the terms of a written agreement. As there is no term of the tenancy agreement requiring the Tenants to move out of the unit at the end of the fixed term, I find that the Tenants are not required to move out of the unit at the end of the fixed term and that the tenancy reverted to a month to month tenancy at the end of June 2015. Although the Landlord argues that other sections of the tenancy agreement supports a required move-out, I do not accept this interpretation, given the lack of clear words requiring a move out at the end of the fixed term and given the unrelated headings over the sections the Landlord refers to. While these sections may indicate that a move-out of the Tenants was discussed, it is clear that a second fixed term tenancy agreement was also discussed. This evidence further supports that the tenancy agreement does not require the Tenants to move out of the unit.

Section 52 of the Act provides that in order to be effective in ending a tenancy a landlord must, inter alia, be in the approved form. As the Landlord only gave the Tenants an email to end the tenancy I find that this method is not effective to end the tenancy and the tenancy therefore continues. The notice to end tenancy is cancelled. The Parties remain free to enter into another fixed term tenancy if they so choose however until this may happened the tenancy continues on a month to month basis until otherwise ended as allowed under the Act.

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. This section further provides that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the undisputed facts, I find that the Landlord took more than the equivalent of ½ month's rent for the security deposit and that the Tenants are therefore entitled to deduct the over payment of **\$695.00** from future rent payable in full satisfaction of this entitlement.

Section 42 of the Act provides that a notice of a rent increase must be in the approved form. As the Landlord did not issue a rent increase using the approved form I find that the rent increase of \$28.00 per month is not in compliance with the Act and the Tenants are entitled to return of the overpaid rent of **\$70.00** (\$14.00 + 28.00 + 28.00). The Tenants may deduct this amount from future rent payable in full satisfaction of this entitlement. As the tenancy is greater than 12 months, the Landlord is at liberty to issue a rent increase using the approved form.

As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of their **\$50.00** filing fee which may be deducted from future rent payable in full satisfaction of this entitlement. The total entitlement of the Tenants is **\$815.00**.

Conclusion

The tenancy continues on a month to month basis. I grant the Tenant an order under Section 67 of the Act for **\$815.00** which may be fully satisfied as set out above. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court. 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: July 17, 2015

Residential Tenancy Branch

