



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 a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents. The tenant had sent a hearing package to each of the named respondents, via registered mail, on January 7, 2019. A written response was received from the landlord at the Residential Tenancy Branch on April 18, 2019. The landlord's representative stated that a copy was sent to the tenant via regular mail on April 18, 2019. The tenant stated she did not receive it by April 20, 2019 and since then she has been out of town. Since the landlord's written submission was not received by the tenant at least seven days before the hearing as required under the Rules of Procedure, due primarily to the landlord not allowing for any mailing time, I informed the landlord that his submission was late and that submissions may be made orally so that the tenant may hear the landlord's submissions.

As a preliminary issue, one of the respondents, referred to by initials AM, stated he is not the landlord but that he assisted the landlord. I noted the tenancy agreement names the only one landlord, referred to by initials AN. The tenant confirmed that she paid rent to AN. The tenant also recognized that AN had difficulty communicating and that she dealt with AM during her tenancy. The tenant was willing to proceed by excluding AM as a named landlord. The style of cause was amended accordingly.

AM confirmed that AN was able to hear the proceedings but stated that AM had difficulty speaking due to a medical condition. Rather, AN could nod his head to

indicate agreement. AM confirmed that he had AN's authority to represent him during this hearing.

AM requested the hearing be adjourned because AN was experiencing difficulties due to a change in medication. AM also stated that he has also been going through medical difficulties and that was the reason the landlord's written response was late. In making his request for adjournment, AM started to introduce the landlord's rebuttal position and I pointed out that AM appeared prepared to respond to the tenant's claims. I informed the parties that I would not grant an adjournment at this point but that I may consider it further as the hearing progressed. Neither party objected to this approach and the hearing proceeded.

After the tenant presented her claim, I determined the tenant did not have a basis for the compensation she seeks and I dismissed her claim. As such, it was unnecessary to further consider adjourning the proceeding.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation due to payment of an unlawful rent increase?

Background and Evidence

The parties executed a tenancy agreement on November 30, 2015 for a two year fixed term tenancy agreement set to commence December 15, 2015 and expire on December 14, 2017 ("the first tenancy agreement"). The rent was set at \$1,535.00 due on the 15th day of every month. The first tenancy agreement contained terms providing that the tenancy would end on the expiry date of the fixed term, not continue on a month to month basis, and that the tenant would have to vacate the rental unit on the last day of the tenancy.

On November 5, 2017 the parties executed another tenancy agreement ("the second tenancy agreement") for a one year fixed term tenancy set to commence on December 15, 2017 and expire on December 14, 2018. The rent was set at \$1,750.00 per month.

The tenant confirmed that she paid rent of \$1,535.00 each month for two years and then \$1,750.00 for one year and that she vacated the rental unit on December 14, 2018. The tenant confirmed that she never received a Notice of Rent Increase.

The tenant was of the position her rent was increased 14% when the rent obligation went from \$1,535.00 to \$1,750.00 per month and that the allowable increase was only 4%. The tenant seeks to recover the rent increase she paid that exceeds 4%.

The tenant explained that she signed the second tenancy agreement because she felt she had no choice because the landlord approached her and told her that unless she signed a new tenancy agreement she would have to move out of the unit by December 14, 2017. The tenant was studying for exams and did not want to jeopardize her education or licensing requirements so she entered into the second agreement so that she would not have to move at that time.

The landlord's representative stated during the hearing that the tenant agreed to and signed the second tenancy agreement which is a new agreement and not a renewal of the first agreement.

Analysis

As provided under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into.

Under section 26 of the Act, a tenant is obligated to pay the rent stipulated in their tenancy agreement, unless the tenant has a lawful right to make deductions from rent. However, a landlord may increase the rent by a limited amount, annually, with at least three months of advance notice and by serving a Notice of Rent Increase in the approved form, pursuant Part 3 (sections 40 through 43) of the Act.

The tenant paid \$1,535.00 per month for two years and this is the amount stipulated under the first tenancy agreement. The rent was not increased during these two years.

In signing the second tenancy agreement on November 5, 2017 the tenant agreed to the new terms of tenancy, as evidence by the word "Agreed" next to her signature. The second tenancy agreement provides that the tenant would pay rent of \$1,750.00 upon commencement of the second tenancy on December 15, 2017, which the tenant did.

Where parties enter into another contract in place of a previous contract, the latter contract replaces the former agreement. As such, I find the second tenancy agreement replaced the first tenancy agreement.

While the legislation changed on December 11, 2018 to eliminate the enforceability of vacate clauses in tenancy agreements, except in limited circumstances, the tenant had already entered into the second tenancy agreement on November 5, 2017 and from that point forward the tenant obligated herself to pay rent of \$1,750.00 starting on December 15, 2017 for a period of one year.

Although the tenant stated she felt she had no choice but to enter into the second tenancy agreement because she did not want to move out during her exams, I find that pressure does not amount to duress or undue coercion that would render the second contract invalid and unenforceable.

In light of the above, I find the tenant paid rent in the amount(s) stipulated by the tenancy agreement(s) she entered into and there was no payment of an unlawful rent increase and there is no legal basis for the tenant's claims. The tenant's application is, therefore, dismissed in its entirety without leave to reapply.

Conclusion

The tenant's 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: April 26, 2019

Residential Tenancy Branch