



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- To recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord BS (the "landlord") primarily spoke on behalf of the landlords. The tenant JT (the "tenant") spoke on behalf of the applicants.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in 2015 and the presents landlords assumed this tenancy in 2016 when they purchased the rental property. The tenants say that they paid a security deposit of \$700.00 to the landlords which was carried over throughout the successive tenancy agreements.

The parties signed a written fixed-term tenancy agreement dated July 2017 which provides that the monthly rent is \$1,375.00 payable on the first of each month. The parties subsequently signed a written fixed-term tenancy agreement in January 2018 which provides a rent of \$1,400.00 and a third fixed-term tenancy agreement in August 2018 provided rent of \$1,500.00. The landlord drafted and presented each of these tenancy agreements to the tenants and the tenants signed and agreed to the terms. The tenants were presented with a new draft agreement in July 2019 proposing a monthly rent of \$1,600.00 but did not agree to the terms and instead ended the tenancy. Some of the pages for each of these tenancy agreements were submitted into evidence. I note that the pages submitted appear to indicate that there are upwards of 80 individual paragraphs in each of the tenancy agreements.

The tenants submit that each of the successive tenancy agreements was in fact a manner of raising the rent for this tenancy above the amount permitted under the Act. The tenants gave evidence that they were unaware of legislation preventing landlords from raising the rent more than once in a 12 month span or above the amounts permitted. The tenants say that they agreed to each of the tenancy agreements issued by the landlord and paid the full amount of rent owed under each agreement. The tenants now seek a monetary award in the amount of \$1,055.00 which they calculate to be the amount of overpaid rent as they submit that the new monthly rent amount should not have been payable to the landlords.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 43 of the *Act* provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, as ordered by the director upon an application by the landlord, or agreed to by the tenant in writing.

The *Act* further provides in section 5 that parties may not avoid or contract out of the *Act*, and any attempts to do so are of no effect.

The tenants submit that each of the successive tenancy agreement issued by the landlord were a means of raising the monthly rent beyond that which was permitted and that they have therefore incurred losses due to the landlords' violation. I find the tenant's submissions to have merit.

The tenancy agreements submitted into evidence contain a jumble of clauses, many of which are contrary to the provisions of the *Act* and would be unenforceable, such as a guest fee, late fees greater than \$25.00 and requiring the tenants provide greater notice to end the tenancy. Furthermore, despite each of these successive agreements prepared by the landlord containing a clause that clearly states the landlord would return the security deposit to the tenants at the end of each tenancy term, the parties gave evidence that the landlords simply held the \$700.00 security deposit initially paid and it carried over to each new tenancy agreement.

I find that the conduct of the parties indicates that this was not a series of separate fixed-term tenancies but a single continuing tenancy in which the landlords required the tenants to enter into a succession of tenancy agreements if the tenants wished to continue to reside in the rental unit. The fixed term provision was for the sole benefit of the landlord. The landlord relied upon the fixed term as the basis for increasing the rent more frequently and above the amount permitted by the *Act* and regulation. The parties gave undisputed evidence that the rent went from \$1,375.00 in July, 2017 to \$1,400.00 in January, 2018, six months later, and raised to \$1,500.00 on August 2018, eight months after the previous increase and an increase of approximately 7.1% when the amount allowed by the regulation was 4.0%.

The *Residential Tenancy Act* provides that parties may not avoid or contract out of the provisions of the *Act* or Regulation. It is my view that the landlord's use of the fixed term provision of the tenancy agreement as it has done here with four separate agreements over two years and the use of the provision to avoid or defeat the mandatory rent increase provisions of the legislation does amount to an attempt to contract out of the legislation. I make this finding, not based on the singular

employment of a fixed term tenancy agreement, but based on its repetitious use over a short period of time and upon its use to increase the rent beyond the amount permitted by Regulation. The *Residential Tenancy Act* does not prohibit a fixed term tenancy agreement, but to condone the use of serial fixed term tenancies would amount to the nullification of important provisions of the legislation intended to protect tenants. I further find that the use of a fixed term tenancy in this manner is unconscionable within the meaning of the Regulation. I find that there is an inequality of bargaining power between the tenants and the landlords in circumstances where the tenants had no alternative but to accept the proffered agreement or find a new home on short notice in difficult circumstances.

While the landlord submits that the tenants made no objection to the rent increases at the time they were presented I find that this acquiescence is not evidence of a true meeting of minds but borne out of the unequal bargaining powers of the parties.

The landlord submits that the rental increase did not cause any financial hardship on the tenants and that the rent charged remained reasonable for the rental market, submissions which are of no relevance to the matter at hand.

The landlord's submissions that the tenants are responsible for damage to the rental property is again of no relevance to the issue of the illegal rent increases and further evidence of the landlord's disregard for the *Act*. If the landlord believed that an additional rent increase was required due to repairs to the property they could have made an application in accordance with the *Act*. They chose not to do so, instead serving the tenants with multiple rent increases over the course of the tenancy under the guise of separate fixed term tenancy agreements.

I find that the landlords have conducted themselves in a manner contrary to the *Act*, to have prepared a series of tenancy agreements which clearly violate provisions of the *Act* and have relied upon the unequal bargaining power between the parties to plow through any objections.

Under these circumstances, I find that the use of the multiple fixed term tenancies to impose a rental increase more than the amount permitted by legislation to be unconscionable; it does amount to an attempt to contract out of the *Act* and Regulation and it is therefore of no force or effect.

I find that the tenants are entitled to a monetary award for the amount of the illegal rent increase paid over the tenancy which the tenants have calculated to be the amount of \$955.00.

The tenants are also entitled to recover their filing fee for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,055.00. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 21, 2019

Residential Tenancy Branch