



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, DRI, RR, RP, PSF, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for cause;
- disputing a rent increase;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which indicates that multiple applications contained in a single application must be related. Generally, the primary focus would be with respect to the applications seeking to cancel the notices to end the tenancy, however in this case, no one has provided me with full copies of either notice to end the tenancy. Therefore, the hearing focused on the tenants' application respecting a rent increase.

Both tenants and the landlord gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the rent increase is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that rent has been increased contrary to the law?

Background and Evidence

The first tenant (TW) testified that this fixed term tenancy began on January 1, 2019 and reverted to a month-to-month tenancy after February 1, 2022 and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided for this hearing and it indicates that rent in the amount of \$1,200.00 is payable on the 1st day of each month, and the tenant testified that there are no rental arrears. On January 15, 2019 the tenants paid a security deposit in the amount of \$600.00 as well as a pet damage deposit in the amount of \$600.00, both of which are still held in trust by the landlord. The rental unit is a basement suite and the upper level is also tenanted.

The tenant further testified that the landlord had advised that rent was increasing because utilities had increased. The tenants offered 40% of the utilities, but the landlord arrived with a new tenancy agreement for rent in the amount of \$1,300.00 per month, a \$100.00 rent increase. The landlord stated that the increase was not for rent but for utilities, and told the tenants that the tenants in the upper level would also be required to pay an additional \$100.00, so the tenants signed the new tenancy agreement, a copy of which has also been provided for this hearing, as well as an Addendum. The landlord did not provide any copies of utility bills to the tenants.

The tenants signed the second tenancy agreement because the landlord had been an amazing landlore and could have increased rent prior, but didn't.

The tenants paid \$1,300.00 for 15 months, but did not pay any rent for July, 2023 and paid \$900.00 for rent for August, 2023 and disputed the increase. The tenants were advised by the Residential Tenancy Branch that the tenants could recover the \$1,500.00 overpayment by reducing rent for future months.

The second tenant (DN) testified that he moved into the rental unit in June, 2023. The tenants raised issues about the upper level tenants to the landlord, but the landlord ignored them.

The tenant also testified that the landlord sent an Addendum marked 1A, which was not signed by the tenants. That was prior to the second tenant moving in, in May, 2023.

A month later, in June, the landlord also provided the tenants with an Addendum stating that the tenants could not use the back yard except for accessing the tenants' shed and that the tenants could not park in the driveway. However, the City Bylaw states that the tenants can use the driveway. The tenants' BBQ and yard tools are also in the back yard. The tenant also learned that according to the City Bylaw the landlord is supposed to live in the building, but he doesn't.

The tenants were told that the increase was not a rent increase, but was for utilities only, which is why the tenants signed the new tenancy agreement. The landlord also told the tenants that the residents in the upper level cannot afford the increase, so they wouldn't be there long.

The landlord testified that the first tenant (TW) had a lease for 3 years, until 2022. The tenant requested that her boyfriend move in, and the landlord obliged. The landlord followed advice from the Residential Tenancy Branch and interpretation of it to the best of the landlord's ability.

No rent was paid in July and in August the tenants paid only \$900.00. Thereafter the tenants continued to pay \$1,200.00 per month.

The landlord also testified that the residents in the upper level also received the same increase.

Analysis

Both parties have provided mountains of evidence, the majority of which are not related to a rent increase.

I have reviewed the tenancy agreements and the Addendums. Firstly, the Addendum marked 1A is not an Addendum or an agreement because it is not signed by the tenants, which means the tenants have not agreed to it. The other Addendum is signed by the landlord and the tenant (TW) on **January 20, 2019**, but is not an Addendum; it states it is a Lease, which names that tenant alone. It states that the tenancy begins on January 15, 2019 and continues on a term basis. Specifically, it states: "7. The term of the Lease is a periodic tenancy commencing at 12:00am on January 15, 2019 and continuing on a term basis (based on the duration as per attached Residential Tenancy Agreement #RTB-1 signed by both the Landlord and Tenant) until the Landlord or the

Tenant terminates the tenancy.” It contains 7 pages and setting out 47 terms, some of which are not lawful. A copy of the tenancy agreement it refers to is not attached. A tenancy agreement signed by the landlord and by the tenant (TW) dated January 20, 2019 is provided in the landlord’s evidentiary material, which is possibly the one referred to. It states that the fixed-term commences on January 1, 2019 and reverts to a month-to-month tenancy after February 1, 2022 for rent in the amount of \$1,200.00.

The landlord has also provided a copy of a Notice of Rent Increase dated May 16, 2023 which appears to increase rent from \$1,300.00 to \$1,326.00 per month effective on September 1, 2023. It also states that it is the first increase since the rent was established on April 1, 2022.

On June 9, 2023, after the landlord served the Notice of Rent Increase, the tenants provided the landlord with a letter indicating that the previous increase was unlawful and that the tenants would deduct the overpayment, and asks that the landlord serve another Notice of Rent Increase in the correct amount.

The landlord has also provided a copy of a letter addressed to the tenant which, in part, addresses the increase in rent. It explains that the percentage allowed for increasing the rent doesn’t apply because a new co-tenant was added to the lease.

The tenant testified that the newer tenancy agreement was signed because the tenants were told that the \$100.00 increase was for utilities, not a rent increase. The tenant also testified that the tenants agreed because the landlord had been an amazing landlord and could have increased rent, but didn’t. That makes it very clear that the tenants agreed to the new tenancy agreement and signed it, but decided 15 months later once the landlord was no longer an amazing landlord that it wasn’t legal. It is a new contract and is a legal document.

As a result, I dismiss the tenants’ application disputing a rent increase. Since the tenants have not been successful, the tenants are not entitled to recovery of the filing fee.

The balance of the tenants’ application is dismissed with leave to reapply.

During the course of the hearing I advised the parties that I would extend the time within which the tenants could dispute the Notices to End the tenancy. I order that the time for disputing the Notices is 5 days from the date of this Decision, or October 18, 2023.

Conclusion

For the reasons set out above, the tenants' application regarding disputing a rent increase is hereby dismissed without leave to reapply.

I hereby order that the time limit for disputing a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, and a One Month Notice to End Tenancy For Cause is extended to October 18, 2023.

The balance of the tenants' application is hereby 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*.

Dated: October 13, 2023

Residential Tenancy Branch