



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing dealt with the tenant's application to dispute an additional rent increase; for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party. Both parties confirmed service of documents upon them.

The tenant requested the application be amended to include requests for repair orders. The landlord stated he was not prepared to deal with repair issues during this hearing and that there had been progress with respect to repairs. I did not grant the tenant's request for amendment. Rather, the tenant was informed of her right to make a subsequent Application for Dispute Resolution with respect to repair orders should the landlord fail to repair and maintain the rental unit in a manner that complies with the requirements of section 32 of the Act.

Issues(s) to be Decided

1. Has the landlord imposed an additional rent increase?
2. Has the tenant established an entitlement to recover monies from the landlord?

Background and Evidence

I heard undisputed evidence as follows. The rental unit is a basement apartment and the upper level has been occupied other tenants during this tenancy. This tenancy

commenced in May 2007 under a verbal tenancy agreement. The monthly rent was agreed upon was \$850.00 inclusive of utilities. At that time the tenant was instructed to pay her rent to the tenant living upstairs ("Gary"). Approximately one month after the tenancy commenced the tenant's boyfriend moved into the rental unit. When Gary moved out of the upstairs unit the landlord learned of the tenant's boyfriend living in the rental unit and contacted the tenant about paying a portion of utilities. The tenant's boyfriend subsequently communicated with the landlord and eventually agreed to the landlord's request and paid the upstairs tenants a portion of utilities. The tenant's boyfriend paid approximately \$1,399.00 to the upstairs tenants from October 2008 through September 2009. After September 2009 no further utility payments were made by the tenant or tenant's boyfriend.

In making this application the tenant submits that the landlord has illegally imposed a rent increase by way of threats of eviction. The tenant explains that the monthly payment of \$850.00 included utilities under the tenancy agreement. When the tenant's boyfriend moved in the tenant had the permission of Gary whom the tenant believed was the landlord's agent and at that time no mention was made with respect to increasing rent. The tenant is seeking to recover the utility payments made by her boyfriend to the upstairs tenants. Upon enquiry, the tenant submitted that her boyfriend is not a tenant under the tenancy agreement.

The landlord was of the position that at the beginning of the tenancy the parties agreed that the monthly rent of \$850.00 was based upon single occupancy. The landlord denied that Gary was an agent of the landlord. The landlord submitted that the tenant's boyfriend became a tenant as the landlord and the tenant's boyfriend discussed most tenancy related issues since September 2008 and and that the terms of tenancy changed by mutual consent.

The tenant refuted the landlord's submissions by stating that she does not recall an agreement at the commencement of the tenancy that the monthly rent was based upon single occupancy or would change if there were more occupants in the rental unit.

I heard from the tenant's boyfriend who provided the following testimony. The tenant's boyfriend offered to call the landlord on behalf of the tenant as the tenant was upset by the landlord's aggressive tone with respect to paying for utilities. The tenant's boyfriend and the landlord had a couple of conversations and then the tenant's boyfriend agreed to pay a portion of utilities to the upstairs tenants. The tenant's boyfriend confirmed that the agreement to pay for utilities was his own doing and not on behalf of the tenant. The tenant's boyfriend confirmed that it was he and not the tenant who paid the utilities to the upstairs tenants.

Provided as evidence for the hearing by the tenant were copies of email communication between the parties, tenant's notes from phone calls with the landlord, and schedules of utility payments made by tenant's boyfriend. Provided as evidence for the hearing by the landlord were copies of communication between the parties and tenancy agreements with the upstairs tenants showing the upstairs tenants are responsible for paying 60% of the utilities.

Analysis

The Act requires that all tenancy agreements be prepared in writing by the landlord. The Act requires specific terms be included in the tenancy agreement including the amount of rent payable, what is included in rent, whether the rent varies with the number of occupants and if so, the amount by which the rent varies.

The Act provides that changes to a tenancy agreement must be made by mutual consent. However, a rent increase must be made by a Notice of Rent Increase issued on the approved form, for an amount permissible under the Act and with at least three

Month's of notice to the tenant. Requiring a tenant to start paying for utilities where utilities were previously included is a rent increase.

In this case the landlord failed to meet his obligation to prepare a written tenancy agreement and record the amount of rent payable and whether the rent varied with the number of occupants. Thus, I am left with disputed verbal testimony as to what the parties agreed upon at the commencement of the tenancy and whether the amount of rent would vary depending on the number of occupants. Generally, disputed verbal testimony is insufficient to meet the burden of proof and in this case it is the landlord's burden to show that rent varied with the number of occupants living in the rental unit.

Further, I note that there is an email from the landlord dated July 22, 2010 that is addressed to the tenant's boyfriend where the landlord states "You are very aware that we had made that agreement when Gary left that you were to pay \$850 + 50% of utilities." [my emphasis added]. This statement indicates to me that prior to Gary leaving there was no agreement with respect to the tenant having to pay utilities or any other form of rent increase based upon the number of occupants in the rental unit. Therefore, I find that tenancy agreement made between the landlord and tenant in May 2007 did not specifically provide that the rent would vary with the number of occupants and by how much the rent would vary.

With respect to the landlord's submission that the tenant's boyfriend was a tenant and that the tenant's boyfriend agreed to a rent increase I find this submission is without legal basis under the Act. As the parties were informed during the hearing a tenant is a person that has rights and obligations under a tenancy agreement and the parties affected have agreed that the person is a tenant. I did not hear that the tenant or the tenant's boyfriend agreed with the landlord that the tenant's boyfriend was a tenant. Accordingly, I find the tenant's boyfriend remains an "occupant". However, even if the tenant's boyfriend were a tenant a rent increase cannot be imposed by verbal mutual

agreement as explained above. Rather, a rent increase must be made using the approved form.

Finally, the tenancy agreements between the upstairs tenants and the landlord do not satisfy me that the landlord and the tenant had agreed that the rent varied with the number of occupants in the rental unit and would require the tenant to pay utilities if she had an additional occupant.

In light of the above findings, I ORDER that the rent remains at \$850.00 per month, inclusive of utilities, and does not vary with the number of occupants in the rental unit.

While I appreciate the landlord may not have known the tenant was going to have a boyfriend move in when the tenancy agreement was being negotiated it is upon the landlord to either prohibit additional occupants or anticipate and reach an agreement with the tenant respect to such a situation when the terms of tenancy are being negotiated. The parties are at liberty to re-negotiate terms of tenancy and record those terms by way of a written tenancy agreement which would replace the verbal tenancy agreement. Alternatively, the landlord is at liberty to issue a Notice of Rent Increase in a manner that complies with the Act.

When a party makes a claim for compensation against the other party, the party making the claim has a burden to establish that they suffered a loss due to a violation of the Act, regulations or tenancy agreement by the other party.

In this case I heard that the tenant's boyfriend took it upon himself to agree to pay utilities to the upstairs tenants and that it was the tenant's boyfriend who made the payments. Having heard the tenant state that her boyfriend is not a tenant, I do not find sufficient evidence that the tenant or a tenant under this tenancy agreement has suffered a loss. Rather, an occupant has paid monies to a third party and as explained above an occupant does not have any rights or obligations under the tenancy

agreement or the Act. Having found that the tenant has failed to show she suffered a loss the tenant has not established an entitlement to compensation from the landlord. Therefore, I dismiss the tenant's claim for compensation against the landlord.

I find that the tenant was partially successful in this application and I award one-half of the filing fee to the tenant. The tenant is authorized to deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

I have determined the rent is currently \$850.00 per month inclusive of utilities and does not fluctuate with the number of occupants. The monies paid by the occupant to the upstairs tenants are not recoverable by the tenant under the Act. The tenant is authorized to deduct \$25.00 from a subsequent month's rent in satisfaction of the award for one-half of the filing fee.

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 07, 2010.

Dispute Resolution Officer