



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

In his documentary evidence, the tenant provided a decision dated November 12th, 2010. The hearing dealt with the landlord's application for loss suffered to clean and repair the rental unit after the tenancy ended. The landlord was awarded a monetary order for \$574.98. Although the tenant did not appear, he provided a written submission which addressed in part rent increases in April 2008 and December 2009, and a 50% utility increase as of November 2009.

Concerning this portion of the dispute, the Dispute Resolution Officer wrote:

"Sections 41, 42, and 43 of the Act outline the requirements and obligations of landlord's when increasing the rent. The Act requires that the landlord give proper notice on an approved form and the Act regulates how much a landlord is permitted to increase the rent per year and a process to increase the rent by a sum greater than permitted. The Act also provides that only one rent increase can occur in a 12 month period."

From the evidence provided by both parties, I am satisfied that the landlord failed to comply with sections 41, 42, and 43 of the Act when he entered into verbal agreements with the tenant to increase the rent and change the amount of utilities payable by the tenant. Pursuant to section 43 of the Act, any agreement between the landlord and the tenant to increase the rent to amount greater than allowed by section 42 must to be in writing. In addition the landlord is still required to provide three months notice and notice must be on the approved form.

As a result, I find that the tenant's monthly rent should have remained at \$500.00 throughout the whole tenancy and that the tenant was only required to pay one third of the cost of utilities. The rent increases in April 2008, November 2009 and January 2010 contravened the Act and are not enforceable. The tenant is at liberty to file an application for Dispute Resolution to recover the sum of rent paid due to rent increases which did not comply with the Act."

Accordingly, the tenant filed this application which is the subject of the above noted claim.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

In his documentary evidence, the tenant provided a statement showing the increased utility and rent payments that were made since April 2008. The tenant's claim is summarized as follows:

- Total overpayment: \$2523.49
- Filing fee: \$ 50.00
- Monetary claim to landlord: \$ 574.98
- Balance owed to tenant: \$1998.51

The tenant also provided copies of 6 receipts showing the increased rent paid to the landlord.

The landlord submitted that the tenant did not provide receipts for every month. He argued that there was insufficient evidence. He put to question whether the tenant paid the increased rent every month and submitted that the tenant should have provided a receipt for every month. He stated that if the tenant did not want to pay the rent increases he should have filed for dispute then, rather than making this retroactive claim.

Analysis

The landlord acknowledged receipt of the tenant's evidence. There was no documentary evidence before me from the landlord rebutting the tenant's submissions. The onus was on the landlord to produce evidence, such as his own records, if he did not agree with the tenant's calculations, and he was obliged to submit his evidence on time for this hearing. I find on the preponderance of the evidence that the tenant paid rent as submitted in his evidence. A decision has already been made that the landlord did not comply with the Act and that the rent increases were not enforceable. There is no evidence that the landlord disputed these conclusions at the hearing. Further, I have no authority to reverse that decision. Accordingly, I find that the tenant is entitled to a monetary order as claimed.

Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order for the balance owed of \$1998.51.

This Order may be registered 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: March 22, 2011.

Residential Tenancy Branch