

Decision

Dispute Codes: MNDC, FF

Introduction

A hearing was previously convened on January 10, 2011 in response to an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties were present, and the tenants agreed to the landlords' request for an adjournment in order to await the availability of a witness for the landlords. In the meantime, the parties also agreed that they would meet on January 17, 2011 in order to attempt to resolve the issues in dispute. While a new notice of dispute resolution hearing was sent to both parties in regard to this reconvened hearing, only the tenants appeared.

Prior to the reconvened hearing, on March 1, 2011 the Branch received a "To whom it may concern" letter from the landlord dated February 14, 2011. In the letter, the landlord stated that during their meeting on January 17, 2011, the parties reached an agreement to the effect that "the amount of rent owing be changed from \$751.00 to \$509.00," and a payment plan agreed to was also described. It is understood that this agreement concerns rent for the calendar year 2010.

Further, in the letter the landlord states that the "tenants have agreed to dismiss their claim of over payment." This reference appears to concern the dispute around the tenants' allegation that there was an overpayment of rent during the 7 month period from May to November 2009 in the amount of \$2,534.00.

During this reconvened hearing the tenants confirmed that agreement was reached with the landlord in regard to rent for 2010, however, they dispute that any agreement was reached concerning the alleged overpayment of rent in 2009. In short, they deny that they have withdrawn their claim for compensation in regard to the alleged overpayment.

Issues to be decided

- Whether the tenants are entitled to a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, in addition to recovery of the filing fee.

Background and Evidence

The rental unit is included in a subsidized housing complex. It is understood that the current monthly rent is \$293.00. The tenants claim that for the 7 month period from May to November 2009, as earlier stated, they overpaid rent in the total amount of \$2,534.00. They claim that this overpayment arose from a reduction in their household income during that time.

Evidence includes, but is not necessarily limited to, copies of several related letters from the landlord to the tenants. Not all of these letters are cited here, but they include those described below.

In evidence is a letter dated September 10, 2010, in which the landlord states, in part, as follows:

When I was given a copy of the Compensation letter of Apr. 22, 2009 in late June showing that [tenant "LDM"] was receiving \$355.03 per week I recalculated the rent as shown and they both signed the Application dated July 2, 2009. Other than the letter dated Dec. 15, 2009 I have never received any notification that the compensation may have been cancelled in spite of frequent requests to [tenant "LDM"] for proof. It could have been reinstated after appeals.

The remaining rents are as shown on the following sheets.

B.C. Housing have requested that I obtain proof of income in the form of their income tax forms and assessments for either 2008 or 2009, whichever is lower, from them in order to verify their current rent. We have received nothing from [them] to date and have made another request in writing dated Sept. 9, 2010.

Further, evidence includes a copy of a letter from the landlord to the tenants dated November 3, 2010, in which it is stated, in part, as follows:

For the record, [the landlord] is still awaiting your written response to requests for income tax returns, and bank statements for the years 2008 and 2009. As stated prior, failure to do so could result in review of rent subsidy.

As well, evidence includes a copy of the letter from the landlord to the tenants dated November 10, 2010, in which it is stated, in part, as follows:

In answer to your question, the records needed are income tax returns and bank statements for the years 2008 and 2009.

Analysis

It appears that rent charged to the tenants for the 7 month period in question, was calculated on the basis of what the landlord understood to be the tenants' household income. It also appears that, to date, the tenants have not provided the landlord with copies of "income tax returns, and bank statements for the years 2008 and 2009" in order to verify their income.

Despite the apparent understanding on the part of the landlord that the tenants have withdrawn their "claim of overpayment" in regard to rent for 2009, should the tenants wish to further pursue the matter directly with the landlord, they have the option of providing the landlord with the income tax returns and bank statements requested.

In the meantime, however, based on the limited documentary evidence and testimony of the parties, I find that there is insufficient evidence to support the tenants' claim that there has been an overpayment of rent for the period from May to November 2009. Accordingly, the application for a monetary order as compensation for the alleged overpayment is hereby dismissed.

As the tenants have not succeeded in their application, the aspect of their application concerning recovery of the filing fee is also hereby dismissed.

Conclusion

Following from all of the above, the tenants' application is hereby dismissed in its entirety.

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*.

DATE: March 31, 2011

Residential Tenancy Branch