



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was scheduled to hear the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The tenant was represented by an agent. One of the named landlords appeared at the hearing and confirmed she was representing both landlords. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

I was not provided documentary evidence from either party for this proceeding. Accordingly, the following information is based upon the verbal testimony of both parties.

The landlords and two co-tenants entered into a written tenancy agreement in June 2008 requiring the tenants to pay rent of \$1,100.00 on the 1st day of every month. In June 2009 one of the co-tenants moved out and another person moved in with the remaining tenant. The tenancy agreement did not provide for a term requiring the tenants to pay additional rent if another occupant moved in.

In July 2010 the landlord verbally told the tenant that the rent would be increased to \$1,200.00 starting August 1, 2010. The tenant paid \$1,200.00 for August 2010 through April 2011. The tenancy ended May 31, 2011 for landlord's use of property and the rent paid for May 2011 was refunded to the tenant.

The tenant is seeking to recover \$538.20 in overpaid rent for the period of August 2010 through April 2011. The tenant calculated this amount by deducting the allowable rent increase from the additional rent paid for August 2010 through April 2011.

The landlord was of the position that the rent increase was justifiable because the tenant had her boyfriend move in to the rental unit for a total of three people residing in the rental unit. Also, the tenant paid the additional rent without objection. Finally, the landlord was unaware that rent had to be increased using a Notice of Rent Increase.

Near the end of the hearing, the landlord suggested that she might have entered into a subsequent written tenancy agreement with the tenant, but she was uncertain. The tenant's agent was unaware of any subsequent tenancy agreement.

The landlord requested more time to look for a subsequent tenancy agreement and provide me with the document after the teleconference call. I did not grant the landlord's request as I found that the landlord has had sufficient time to prepare for this hearing and provide all relevant documents to both the tenant and the Residential Tenancy Branch prior to the scheduled hearing.

Analysis

A tenant is required to pay rent in accordance with the amount stipulated in the tenancy agreement, or as changed in accordance with the Act. The Act does provide that rent may vary with the number of occupants living in the unit if the tenancy agreement provides for such a term. In this case, I heard that the tenancy agreement did not provide for a term concerning additional occupants.

Sections 40 through 43 of the Act provide for rent increases. The Act requires that a landlord serve a tenant with a Notice of Rent Increase in order to increase the rent. In addition, the Act limits the amount of the rent increase and requires the landlord to give the tenant three full months of advance notice of a rent increase.

Based on the undisputed testimony, I accept that the monthly rent was \$1,100.00 and that it was increased to \$1,200.00 by the landlord without a Notice of Rent Increase. Accordingly, I find the increase was non-compliant and invalid.

The Act provides that where a tenant pays a rent increase that did not comply with the requirements of the Act, the amount of the increase may be recovered by the tenant.

I find the landlord's statement that she might have entered into a new tenancy agreement with the tenant to be less than convincing and in any event was unsubstantiated by documentary evidence. Therefore, I do not accept that there was a new tenancy agreement that required the tenant to pay rent of \$1,200.00 per month.

In light of the above, I find the tenant entitled to recover the rent increase paid for the period of August 2010 through April 2011; however, the tenant is seeking compensation for less than the rent increase she paid. Since the Act provides that the tenant may recover the overpaid rent, I grant the tenant's request to recover the lesser amount of \$538.20.

With this decision the tenant is provided a Monetary Order in the amount claimed of \$538.20 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$538.20 to serve upon the landlords and enforce as necessary.

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: September 23, 2011.

Residential Tenancy Branch