



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MNR, MNDC and FF
	Tenant:	MNDC

Introduction

These applications were brought by both the landlord and the tenant.

By application of October 25, 2011, the landlord sought a Monetary Order for \$4,990 for unpaid rent, rent arrears, utilities and loss of time (not claimable).

By prior application made September 2, 2011, the tenant sought a Monetary Order for \$3,250 for return of rent resulting a claim of improperly imposed rent increases

Issue(s) to be Decided

These applications require decisions on whether either or both parties have proven claims against the other.

Background and Evidence

This tenancy began on or about June 5, 2010 when the tenant and his wife moved into a room in the landlord's house initially sharing a portion of the house with an existing tenant who the landlord stated had been paying \$1,100 per month for two rooms. The landlord stated that the existing tenant's rent was reduced to \$600 and the subject tenant was to pay \$500 per month.

There is no written rental agreement.

The parties agree that the tenant gave the landlord \$450 in June 2010. The tenant stated the amount was \$300 for the room and \$150 security deposit.

The landlord makes claim that it was all for rent and that it was \$50 short. He stated that he was trying to help out the tenant and his expectant wife temporarily after their move from Toronto as the tenant was on Worker's Compensation.

The landlord stated with certainty that the tenant had moved into a non-shared part of the house at an agreed rent increased to \$750 per month in January 2011.

The tenant was equally adamant that the move took place in March 2011 and that the requested rent was \$550, although he believed the original \$300 per month still applied.

The landlord claims that the tenant paid no rent for June or July of 2011. The tenant stated that he did pay for those two months but they are not included in his bank statements that show a series of \$500 rent payments which the tenant claimed was supplemented by \$50 cash payments. The tenant also claims that he loaned the landlord \$2,000.

The landlord stated that he had sold the property in July 2011 and the tenancy continued under the new landlord.

Analysis

I find it impossible to render a decision in this matter for the following reasons:

1. There is no written rental agreement as required under section 13 of the *Act* to establish a base monthly rent;
2. The parties both constantly interrupted one another, and the tenant in particular, spoke so incessantly that I had to mute his line two or three times;
3. The parties were both evasive and contradictory when asked direct questions such as when the tenants relocated, the amount of rent originally agreed upon, whether there was a security deposit, the change in rent after the move, etc.;
4. There was no corroborating evidence and the tenant's bank record showing payments of \$500 per month to the landlord and his claim of paying an additional \$50 in cash do nothing to resolve the disagreement as to rent;

5. There remains the question that, if the landlord believed the tenant was paying less than the agreed to rent, why did he not issue a Notice to End Tenancy at some point during the tenancy;
6. Similarly, If the tenant believed he had been subject to non-compliant rent increases, why did he wait until the landlord had sold the property to make an application. I can understand initially that, as a new arrival on compensation with an expectant child, how the tenant might have delayed an earlier action. However, the tenancy continued for 14 months during which time the tenant might have found new accommodating or brought a timely application.

Both parties have largely ignored the legislation put in place to secure their interests in residential tenancy agreements, as well as elementary business principles such as issuing or demanding receipts. They now seek remedies that, because of their early and continuing compliance, are practically impossible to determine.

For these reasons, and because I find the oral evidence given by both parties to be unproven and unreliable and because neither party has met the burden of proof to warrant a monetary award, I dismiss both applications without leave to reapply.

Conclusion

Both applications are dismissed without 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: November 22, 2011.

Residential Tenancy Branch