



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, PSF, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package, although neither party was certain when this occurred. I am satisfied that the landlord was served with a copy of this package and was prepared to proceed with this hearing. The tenant confirmed that he received a copy of the landlord's written evidence package. The tenant did not submit any written evidence.

Issues(s) to be Decided

Has the landlord attempted to increase the tenant's rent beyond the amount allowed under the Regulation? Is the tenant entitled to a monetary award for losses arising out of this tenancy or for the landlord's failure to provide a service or facility required by law? Should any orders be issued against the landlord with respect to this tenancy? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

The parties agreed that the tenant moved into one of the two basement rental units in this property on August 22, 2011 on the basis of an oral tenancy agreement. No one else lives in the other basement rental unit. The landlords live on the main floor above the tenant. The landlord testified that this was a one-year fixed term tenancy scheduled to end on September 30, 2012. The tenant testified that he did not agree to a fixed term tenancy and understood that he could remain in the rental unit on a month-to-month basis (i.e., a periodic tenancy). The landlord's agent (the agent) testified that the landlord has sent the tenant a letter requiring him to vacate the rental unit by September 30, 2012 in accordance with their oral fixed term tenancy agreement. Monthly rent is set at \$750.00, payable in advance on the first of each month.

At the hearing, I advised the landlord's agent that if no fixed term tenancy agreement was signed and the tenant maintains that no such oral agreement existed, the tenancy is a periodic tenancy with no fixed date whereby the tenancy ends.

The tenant's application to dispute an alleged rent increase to \$1,200.00 per month was contested by the male landlord (the landlord) and his agent. They said that the landlords have not issued any requested rent increase. In fact, the landlord and his agent claimed that the landlords were attempting to end this tenancy in accordance with the terms of their oral fixed term tenancy agreement. When the status of the oral tenancy agreement was clarified at this hearing, the landlord's agent said that the landlord will be issuing the tenant a 2 Month Notice to End Tenancy for Landlord's Use as a close family member needs to occupy the rental unit soon.

The tenant's application for a monetary award of \$1,000.00 included the tenant's claim that the landlord has not provided his rental unit with adequate heat or hot water during this tenancy. The tenant also applied for an order requiring the landlord to provide adequate heat and hot water. The tenant also applied for an order preventing the landlord from accessing his rental unit.

Analysis

As I am satisfied that the landlord has not requested a rent increase beyond the \$750.00 initially set by the parties, I dismiss the tenant's application to dispute the alleged rent increase.

To establish certainty for this tenancy, at the hearing I advised the parties that the existing tenancy agreement between the parties is by way of a periodic tenancy and not a fixed term tenancy.

The tenant's application regarding the adequacy of the heat and hot water in this rental unit is somewhat puzzling. The tenant did not dispute the agent's oral and written evidence that heating for this rental unit is by way of an electric baseboard heating system whose controls are located in the basement rental unit where the tenant resides. From this undisputed evidence, I conclude that the tenant has control over the heating source in the rental unit. The tenant said that the heat was adequate before March 2012, but that it was cold in his basement rental unit since then. The agent also referred to a series of gas bills entered into written evidence by the landlord. These bills reveal steady and relatively consistent gas bills, the source of hot water for the hot water heater in this rental property until March 2012, when the agent claimed that the landlord told the tenant that he was expecting the tenant to end his tenancy by the end of September 2012. When that occurred, the agent gave undisputed testimony that the tenant began running the hot water tap constantly in order to inconvenience and add costs to the landlord. The landlord's gas usage which showed a steady pattern from September 2011 until February 2012 increased dramatically from a bill of \$193.91 due on February 3, 2012 to \$1,144.52 for a similar period due on April 4, 2012. The landlord's agent claimed that it was the tenant who had been causing hot water shortages in this rental property so as to cause difficulties for the landlords.

Based on a balance of probabilities, I find that the tenant has failed to provide sufficient evidence to demonstrate that he is entitled to a monetary award for a lack of adequate heat or hot water in this rental unit during this tenancy. He supplied no written evidence, no record of having made written requests to the landlord to correct any heating or hot water deficiencies, nor did he present any witnesses or witness statements who could substantiate his account of the heating and hot water problems has been experiencing. The tenant has control of the heating system in his rental unit and has not provided sufficient evidence to demonstrate that the heating system is either malfunctioning or deficient. I dismiss the tenant's application for a monetary award. I also dismiss the tenant's application for an order requiring the landlord to provide additional heat or hot water to this rental unit.

At the hearing, the tenant cited an incident where one of his relatives told him that a woman from the landlord's residence entered the tenant's rental unit to check for smoke possibly coming from the basement. The tenant provided few details regarding this event reported to him second-hand by a relative who did not attend this hearing and provided no written statement regarding this incident.

The landlord's agent was familiar with this situation and stated that someone from the landlord's residence did knock on the door to check a gas or smoke smell as that individual was worried that there might be a potential fire in the basement rental unit.

On other occasions, the agent stated that a woman knocked on the tenant's door to let the tenant's relatives know that the tenant's children were playing unsafely outside the residence.

I do not find that any of the incidents related by either of the parties would indicate the need to issue an order against the landlord to restrict the landlord's access to this rental unit. The landlord's agent confirmed that the landlords are aware that they need to provide the tenant with 24 hour written notice to enter the rental premises unless there is an emergency requiring the landlord's attendance in the rental unit in order for health or safety reasons or to safeguard the landlord's property. I dismiss the tenant's application for the issuance of an order restricting the landlord's right to access the rental unit as I am not satisfied that there has been any breach of the tenant's rights to quiet enjoyment of his rental premises. As I also find no evidence that the landlords have failed to comply with the *Act*, I find that there is no need to issue orders against the landlords.

Since the tenant has been unsuccessful in this application, the tenant bears responsibility for his filing fee for this application.

Conclusion

I dismiss the tenant's application without leave to reapply.

To establish certainty for this tenancy, I order that the existing tenancy agreement between the parties is by way of a periodic tenancy and not a fixed term tenancy.

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 05, 2012

Residential Tenancy Branch