



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation as the result of late rent payments fees that were not in accordance with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$5,000.00 as a result of late fees imposed that were not in accordance with the Act?

Background and Evidence

At the start of this hearing the parties indicated that the tenancy commenced in June 2002; the landlord named as a respondent acts as agent for the owner, but has not done so throughout the complete term of the tenancy. There is not a signed tenancy agreement.

The tenant has claimed \$5,000.00 compensation for late fees imposed since January 2010; he supplied a summary of late payment charges he says the landlord has included as rent. The application indicated the landlord has charged \$10.00 per day in late fees. The details of the dispute section of the application referenced an illegal rent increase made by the landlord; the tenant indicated he was not disputing the rent amount during this hearing.

The tenant supplied copies of ledgers spanning a number of months between April 2010 and July 2012. Records between March 2001 and March 2012 were not supplied. The landlord stated that the ledgers submitted by the tenant are fraudulent and that the tenant created the ledgers himself. The tenant stated that the ledgers were given to him by the landlord throughout the tenancy and that he did not create them.

Several of the ledgers submitted by the tenant had hand-writing on them that the tenant suggested looked much like the landlord's hand-writing, which was contained in some of the landlord's evidence submission.

The landlord submitted 103 pages of evidence that showed rent deposits made by the tenant to the landlord's account over the period of time in dispute. The landlord's evidence included receipts issued each month, which detailed the amount of rent paid, the utilities owed, payments made and accumulated arrears. Copies of utility bills were supplied as evidence plus copies of the landlord's bank statement, showing deposits made in the sums shown on the monthly receipts. The receipts issued to the tenant corresponded with the bank account payments indicated on the statements supplied by the landlord.

The tenant supplied a copy of an unsigned letter from the landlord, dated September 1, 2010. The letter gave the tenant 2 choices; to pay \$1,400.00 per month, only an \$80.00 increase; late payments would still apply. Or, the tenant could choose rent in the sum of \$1,600.00 per month that would include late payment charges. The landlord stated he did not issue this letter.

The landlord's evidence submission included an unsigned letter to the tenant, dated May 1, 2010. This letter informed the tenant of a 3.8% rent increase effective September 1, 2010, to \$1,370.00. The tenant said he never received this letter and that rent owed was \$1,320.00 per month.

During the hearing the landlord stated that the parties had attended a previous hearing, held on September 25, 2012. The landlord said that the tenant had been evicted for non-payment of rent and that rent was found to be owed in the amount set out by the landlord; \$1,370.00 per month.

The parties understood that I would reference the September 25, 2012 decision and consider that decision in relation to the claim made by the tenant in this application, as I am bound by previous findings.

The tenant did not dispute the details of the bank statements supplied by the landlord; but he relied upon the ledgers he submitted, which he claimed showed he had overpaid rent, by making late fee payments that were not in accordance with the Act. The August 2012 ledger showed that the tenant owed the landlord \$2,965.00 in arrears, rent and utilities. Throughout the ledgers, reference was made to outstanding amounts owed, unpaid balances from previous months and late payment charges. The ledger showed rent owed in the sum of \$1,320.00 in April 2010; increasing to \$1,600.00 for rent and late payment charges in December 2012.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The decision issued on September 25, 2012, was the result of a cross-application hearing. The dispute resolution officer found that the tenant owed the landlord \$2,680.00 to September 2012, for unpaid rent and loss of rent revenue. Rent was accepted as \$1,370.00 per month.

The decision issued on September 25, 2012, indicated the landlord gave testimony that the tenant had started to fall behind in rent payments, so they had reached agreement that the tenant would make additional rent payments of \$230.00 per month to cover rent arrears. The landlord submitted that English is both parties' 2nd language and that there was confusion in relation to terminology used.

I find that what the tenant is referring to as late rent fees were in fact payments made to cover rent arrears, or, rent paid late. I find that agreement was not in the sense of a fee imposed, but simply an arrangement that allowed the tenant to continue the tenancy while he paid rent arrears each month, along with rent owed for that month.

In relation to the allegation by each party that the other has created documents or made fraudulent submissions, I find that those allegations do not affect the outcome of this decision. The tenant had the burden of proving that the landlord had imposed late fees in the sum of \$200.00 each month between September 2010 and January 2012 and \$438.00 between February and August 2010.

The tenant did not supply any proof of payments made; other than the ledgers he supplied as evidence, which failed to demonstrate any excess payments were made. In fact, it has been found on September 25, 2012, that the tenant owed the landlord rent, a finding which aligned with the evidence before me. In the absence of the tenant's own banking records or any other detailed breakdown showing late fees paid by the tenant during the time period of his claim, I find, on the balance of probabilities, that the tenant has failed to substantiate his claim and that it is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 05, 2012.

Residential Tenancy Branch