



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- other remedies, which the tenant described in his application and at the hearing as an order to set the correct monthly rent for this tenancy.

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.

Preliminary Matters – Service of Documents

The tenant testified that he left a copy of his dispute resolution hearing package for the landlord in the landlord's agent's (the agent's) mailbox on July 17, 2013. The tenant testified that he posted another copy of his hearing package and a copy of his written evidence package on the landlord's back door on August 13, 2013. The agent confirmed that he received a copy of the tenant's hearing package left for him on July 17, 2013. He said that he forwarded a copy of this hearing package to the landlord. The landlord confirmed that his agent forwarded him a copy of the tenant's hearing package. The landlord testified that he did not receive the copy of the tenant's hearing package and written evidence package that the tenant claimed to have posted on his door on August 13, 2013. I am satisfied that the tenant has served the landlord with a copy of his dispute resolution hearing package to an address where the landlord was carrying on his business as landlord (through his agent).

Section 88 of the *Act* outlines the ways that documents such as written evidence can be served to a party. There is disputed testimony as to whether the tenant served his written evidence package to the landlord. Section 88 of the *Act* establishes that the posting of evidence can constitute service if it is attached to a door other conspicuous place at the address where the party resides. In this case, the tenant claimed to have posted this material on the landlord's back door; the landlord denies having received

this package.. Without a witness to confirm this posting, I do not find that the tenant has demonstrated that he served this evidence to the landlord in accordance with the *Act*. As such, I have not considered the tenant's written evidence.

At the hearing, the agent testified that he taped copies of the landlord's 8 pages of written evidence on the tenant's door. He did not say when this occurred. The tenant testified that he had not received that evidence. The agent testified that the tenant likely already had copies of all of these documents. The tenant confirmed that he had been provided with a copy of the Residential Tenancy Agreement (the Agreement) for this tenancy shortly after this tenancy commenced. He also confirmed that he had received letters from the agent and a handwritten summary of the tenant's rent payments since April 2012. He said that this list of rent payments was accurate. Although I am not satisfied that the landlord served his written evidence to the tenant, the parties agreed that the tenant already had the documents contained in that written evidence. As such, I have considered the landlord's written evidence in reaching my decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? What is the correct monthly rent to be applied to this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This tenancy began on March 21, 2012. Both parties agreed that the monthly rent according to the written Agreement signed by both parties was set at \$550.00. The landlord continues to hold the tenant's \$275.00 security deposit paid on March 21, 2012.

The tenant's application for a monetary award of \$1,000.00 included requested compensation for a number of problems that he maintained have occurred during his tenancy. He testified that shortly after his tenancy began, he raised concerns with the landlord who lives above his basement suite about the level of noise that the landlord, his family and guests were creating. He testified that when he informed the landlord that the landlord's failure to reduce the noise level was prompting him to end this tenancy, the landlord initially agreed to reduce the tenant's rent by \$50.00 per month. By August 2012, the tenant said that the landlord had agreed to reduce his rent by \$100.00 to \$450.00 per month. The payment ledger that the landlord entered into written evidence confirmed that the tenant paid \$550.00 for April and May 2012, \$500.00 for June 2012 and \$525.00 for July 2012. As of August 2012, the tenant reduced his monthly rent payments to \$450.00 for the next three months.

In November 2012, the tenant was unable to pay his rent because of personal problems he was having at that time. However, the parties agreed that he would pay an extra \$150.00 per month until he was current with his rent. After paying the landlord \$600.00 for four months, the tenant returned to paying \$450.00 per month for April 2013. The tenant paid \$375.00 for May 2013 and \$450.00 for June 2013.

Once the landlord hired the agent to look after the management of the tenant's basement suite, the agent sent the tenant a June 8, 2013 letter advising him that the stated monthly rent for this tenancy in the Agreement was \$550.00. The agent requested that all future payments should be for \$550.00 and payable to him as the landlord's agent.

Although the tenant agreed that the original monthly rent as set out in the Agreement was \$550.00, he maintained that this was lowered to \$450.00 as of August 2012, as per an oral agreement between the parties. The tenant claimed that the agent had arbitrarily increased his monthly rent in excess of the annual amounts allowed under the *Act* and the *Regulations*. For 2013, the maximum amount of rent increase allowed without applying for authorization to apply an Additional Rent Increase was set at 3.8%. The tenant requested an order setting his monthly rent at \$450.00, the amount that he had been paying since August 2012.

The landlord adamantly denied having given the tenant authorization to reduce his rent by any amount. He said that the tenant has been routinely either late in paying his rent or has been paying less than he was supposed to be paying for many months. After becoming frustrated with the tenant's refusal to pay the rent as established in their Agreement, the landlord said that he hired the agent to look after the rental of this basement suite. The landlord also denied having caused excessive noise. He said that his grandchildren visit on Friday evenings, but that this is the only time when there would be any unusual level of noise coming from his portion of this home.

The tenant also complained that the landlord had been taking advantage of him to deal with other tenants in a nearby property that the landlord owns. He testified that he had to deal with these other tenants' concerns while the landlord was out of town a number of times.

Analysis

Section 28 of the *Act* establishes a tenant's right to quiet enjoyment as follows:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;...

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Although I have given careful consideration to the tenant’s claim that he has suffered a loss of quiet enjoyment of his premises due to the noise coming from the landlord’s activities above his basement suite, he has not supplied any written evidence or sworn testimony from anyone else who can attest to the level of disruption experienced in the tenant’s basement suite. While there is some evidence that the landlord has accepted his payment of less rent than that specified in the Agreement, there is conflicting evidence as to whether this reduced rent resulted from the tenant’s complaints about his loss of quiet enjoyment due to the noise caused by the landlord. The landlord also denied creating an unusual level of noise.

Under these circumstances, I find that the tenant has not supplied sufficient evidence to demonstrate that he is entitled to a reduction in rent for the loss in value of his tenancy due to a loss in his quiet enjoyment of his rental unit. I dismiss the tenant’s application for a monetary award for losses and damages arising out of this tenancy without leave to reapply.

I also find insufficient evidence to demonstrate that the tenant is entitled to some form of monetary award in this tenancy for performing work or services for the landlord with respect to his other tenants. In this regard, the tenant admitted that he had nothing in writing from the landlord to demonstrate that he was empowered to act on the landlord’s behalf. This would appear to be an employment-related dispute and one which is not within the jurisdiction of the *Act*.

I have also examined the evidence provided by the parties with respect to the tenant’s claim that he has been subjected to a rent increase not permitted under the *Act*.

As of June 8, 2013, the tenant was notified by the agent that the landlord intended to pursue monthly rent of \$550.00, the amount stated in the Agreement. Since then, the tenant and the agent have made arrangements through the Ministry of Social Development and Housing (the Ministry) to have the Ministry’s Shelter Allowance paid directly to the landlord through his agent. The agent gave undisputed testimony that the Ministry has made direct monthly payments of \$550.00 for July and August 2013.

When disputes arise as to the terms of an Agreement, the best evidence is the signed terms as set out in that Agreement as opposed to claims by either party as to the terms of oral agreements made subsequent to their signing of the Agreement. Under these circumstances, I find that the best evidence of the monthly rent due is the written Agreement. I find the tenant's correct monthly rent as of July 2013 is \$550.00, the amount identified in the original Agreement.

From the period from August 2012 until June 2013, there is no evidence that the landlord pursued any formal measures to ensure that the tenant paid the \$550.00 in monthly rent identified in the Agreement as opposed to the actual amounts paid by the tenant. There is no evidence that landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, nor is there any evidence that the landlord applied for a monetary Order against the tenant for unpaid rent. By accepting the tenant's monthly rent payments in amounts significantly less than the amount stated in the Agreement since August 2012, I find that the landlord has essentially waived his entitlement to recover any difference between the amount paid and the amount the landlord considered owing. For this reason, I find that the landlord's entitlement to monthly rent of \$550.00 became effective **only** as of July 1, 2013, the first full month after the agent provided the tenant with written notice that the landlord was re-establishing his right to the amount of monthly rent set out in the Agreement. I order that the landlord is not entitled to recover any monetary award for the period from August 2012 until June 2013, as I find that there is sufficient evidence that for whatever reason the landlord failed to exercise his right to rent not paid by the tenant over that period.

Conclusion

I dismiss the tenant's application for a monetary Order without leave to reapply. I order that the correct monthly rent for this tenancy is set at \$550.00 as of July 1, 2013. I order that neither party is entitled to any monetary award relating to underpaid or overpaid rent for the period from August 2012 until July 1, 2013.

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: August 22, 2013

Residential Tenancy Branch

