



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, LRE, PSF, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant stated that he did not intend to file an application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and that matter will therefore not be considered at these proceedings.

At the hearing the Tenant stated that he did not intend to apply for a monetary Order of \$550.00, and that he is only seeking to recover a rent overpayment of \$400.00.

The Tenant stated that on January 07, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that he submitted no documentary evidence in support of the Application for Dispute Resolution.

On January 19, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were not served to the Tenant as evidence for these proceedings, as they have all been previously given to the Tenant at various times. As the Landlord's evidence has not been served to the Tenant as evidence for these proceedings, as is required by Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, the evidence has not been accepted as evidence for these proceedings.

I note that even if all of the Landlord's documents have been previously served to the Tenant, there can be no reasonable expectation that the Tenant is still in possession of all of those documents. This is particularly true in these circumstances, where some of the documents are bills from the summer of 2014, which the Tenant may not have kept even if they were provided to him.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Section 59(2)(b) of the *Act* requires an Applicant to provide full particulars of each claim. In these circumstances the Tenant provided no details in his Application for Dispute Resolution in regard to his application for an Order requiring the Landlord to provide services or facilities, although at the hearing he stated it related to parking and laundry facilities.

I decline to consider the Tenant's application for an Order requiring the Landlord to provide services or facilities, pursuant to section 59(5)(a) of the *Act*, because the Application for Dispute Resolution did not provide sufficient details of the nature of this claim. I find that proceeding with the Tenant's application for this Order makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the application. The Tenant retains the right to file another Application for Dispute Resolution for an Order requiring the Landlord to provide services or facilities.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being required to pay additional rent for having guests?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2013; that there is no written tenancy agreement; and that the Tenant agreed to pay monthly rent of \$600.00.

The Landlord and the Tenant agree that the Tenant had overnight guests for approximately 11 days in August of 2014, 14 days in September of 2014, and 14 days in November of 2014. The parties agree that the Landlord asked the Tenant for an additional \$400.00 in rent to cover costs associated to these visits.

The Tenant stated that he paid \$600.00 in rent on November 01, 2014; \$800.00 in rent on December 01, 2014; and \$800.00 in rent on January 03, 2015, which represents a \$400.00 overpayment for these three months. He stated that he has receipts for all of these payments.

The Agent for the Landlord stated that the Tenant paid \$550.00 in rent on November 26, 2014. She stated that prior to receiving this payment the Landlord prepared a receipt for \$600.00, dated November 01, 2014. She stated that this receipt was provided to the Tenant on November 26, 2014 without correcting the date of the receipt or the amount of the payment.

The Agent for the Landlord stated that the Tenant paid \$850.00 in rent on December 01, 2014, \$50 of which was applied to overdue rent from November of 2014, \$600.00 of which was applied to rent for December of 2014, and \$200.00 of which was for having additional occupants in the rental unit.

The Agent for the Landlord stated that the Tenant was issued a receipt for \$950.00, dated December 01, 2014. She stated that this receipt was returned to the Landlord by the Tenant because the amount was incorrect. She stated that the Tenant was issued a second receipt,

dated January 03, 2015, in the amount of \$800.00. She stated that this receipt was intended to replace the receipt issued in error on December 01, 2014 and was for rent for December of 2014. I note that the second receipt for rent for December should have been \$850.00, if the Agent for the Landlord was correct in stating that the Tenant paid \$850.00 in rent on December 01, 2014.

The Agent for the Landlord stated that no rent was paid for January of 2015.

At the hearing the Tenant stated that he would like to reduce a future rent payment by any amount I find is due to him as a result of this claim.

Analysis

On the basis of the undisputed evidence, I find that the Landlord has failed to comply with section 13(1) of the *Act*, which requires landlords to prepare a written tenancy agreement. Section 13(2)(f)(iv) of the *Act* stipulates that a written tenancy agreement must specify if the rent varies with the number of occupants and, if so, by how much.

Section 40 of the *Act* stipulates that the rules regarding rent increases do not apply if the rent is increased as a result of additional occupants, providing that the increase is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) of the *Act*. As the Landlord has not prepared a written tenancy agreement which specifies how much the rent will increase if additional people occupy the rental unit, I find that the Landlord does not have the right to increase the rent simply because other people occupy the rental unit and that any rent increases must comply with sections 41, 42, and 43 of the *Act*.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to an amount that is calculated in accordance with the *Residential Tenancy Regulations*. I find that the \$400.00 rent increase for the 39 days other people were occupying the rental unit far exceeds the allowable rent increase for 2014. I therefore find that the Landlord did not have the right to increase the rent by \$400.00 for the period of these visits, pursuant to section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount ordered by the director upon application under section 43(3) of the *Act*. As there is no evidence the director authorized the Landlord to increase the rent by any amount, I find that the Landlord did not have the right to increase the rent by \$400.00 for the period of these visits, pursuant to section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that a tenant agrees to, in writing. As there is no evidence that the Tenant agreed to a \$400.00 rent increase for the period of these visits, I find that the Landlord did not have the right to increase the rent by \$400.00, pursuant to section 43(1)(c) of the *Act*.

Section 43(5) of the *Act* stipulates that a tenant may deduct a rent increase from the rent or otherwise recover the increase if a landlord collects a rent increase that does not comply with the legislation. As the legislation does not permit the Landlord to increase the rent by \$400.00 for the period of these visits, I find that the Tenant has the right to recover any rent increase that has been paid.

When making a claim for compensation the party making the claim has the burden of proving their claim. Proving a claim includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

The burden of proving he overpaid his rent rests with the Tenant. I find that the Tenant has submitted insufficient evidence to establish that he overpaid his rent by \$400.00. In reaching this conclusion I was heavily influenced by the absence of evidence, such as receipts or bank records, which corroborate his testimony that he paid \$400.00 or that refutes the Agent for the Landlord's testimony that he only paid \$200.00. I therefore find that he is not entitled to a rent refund of \$400.00.

On the basis of the undisputed evidence, I find that the Tenant by at least \$200.00. I therefore find that he has the right to deduct \$200.00 from a future rent payment, pursuant to section 43(5) of the *Act*.

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of \$250.00, which is comprised of a rent overpayment of \$200.00 and \$50.00 for filing this Application for Dispute Resolution. Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenant to reduce one future rent payment by \$250.00.

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: January 28, 2015

Residential Tenancy Branch

