



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding T.L.A. ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$405.00 which includes the cost of pest control supplies, over paid rent and the return of a key deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issues to be decided

Was the landlord negligent with regard to responding to the tenant's complaints of bed bugs? Did the landlord impose an illegal rent increase? Is the tenant entitled to a monetary order for the cost of pest control supplies and for overpaid rent?

Background and Evidence

The tenancy started in September 2011 and ended on March 01, 2014. The monthly rent at the end of tenancy was \$337.00. The current landlord purchased the rental property in September 2011. The tenant stated that he paid a key deposit of \$25.00 to the previous landlord. The tenant also agreed that he had not yet returned the key to the landlord.

The tenant stated that in 2011 he made several verbal complaints to the landlord regarding the presence of bed bugs in the rental unit and the landlord took no action. The landlord denied having received any complaints.

The landlord stated that in March 2013 she hired a pest control company to service the rental property because she had received some complaints from the occupants of the building.

The tenant agreed that he did not serve the landlord with written complaints and stated that he was unaware of his ability to apply for dispute resolution to obtain an order directing the landlord to take pest control measures.

The tenant stated that he purchased own supplies and has filed four receipts in the total amount of his claim of \$114.00 for pesticides. Two of the receipts are dated December 2011 and April 2002. One of the receipts is faded and cannot be read. The other receipt is dated April 2013 and is signed by the landlord for \$10.00. The landlord stated that she recalled signing a receipt in April 2013 but was confused about what she was signing. The receipt states that she received \$10.00 from the tenant.

The tenant also stated that in October 2011 he received a notice of rent increase to be effective January 01, 2012. The increase was for \$10.00.

The tenant stated In October 2012, he received another notice of rent increase of \$20.00 to be effective January 01, 2013. The tenant paid rent in the amount of \$330.00 for 2013.

The tenant stated that in October 2013, he received a notice of rent increase of \$20.00 to be effective January 01, 2014. The tenant found out that this was not in keeping with the amount set by legislation and therefore he paid a rent increase of \$7.00 for the remainder of the tenancy.

The tenant is claiming that he over paid \$266.00 in rent and is claiming this amount.

The tenant is also claiming the return of his key deposit of \$25.00. The landlord denied having received a key deposit or the key. The tenant stated that he has proof of having paid the key deposit but had not filed it into evidence.

Analysis

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the tenant and landlord provided conflicting testimony regarding the problem of bed bugs. The tenant stated that he made verbal complaints and the landlord stated that she had not received any.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Since the tenant has not proven that he notified the landlord of the presence of bedbugs, I find on a balance of probabilities that it is more likely than not that the landlord was not informed of the problem. Since the receipts filed into evidence are unclear or dated as far back as 2002, I find that I must dismiss the tenant's claim for \$114.00 for supplies to treat bed bugs.

Pursuant to section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulations, or ordered by the director on an application by the landlord or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with the Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

Effective January 01, 2012, the tenant's rent increased from \$300.00 to \$310.00. The approved rental increase was at a rate of 4.3%. Accordingly the landlord imposed a legal rent increase on the tenant and the tenant did not overpay rent in 2012.

The landlord imposed a rent increase effective January 01, 2013 at a rate of 6.40% when the approved rate was 3.8%. This increase was not ordered by the director as the landlord had not made application for a rent increase in excess of the legislated amount. This increase raised the rent from \$310.00 to \$330.00 instead of the legislated amount of \$321.78. Therefore the tenant overpaid rent in the amount of \$8.22 per month for a period of 12 months. Accordingly, the tenant overpaid rent in the total amount of \$98.64 for this period.

The landlord further imposed a rent increase of \$20.00 effective January 01, 2014. The tenant made enquiries and found out that the legislated rate of increase was 2.2% which worked out to \$7.26. The tenant paid an increased rent of \$7.00 for the remainder of the tenancy. Accordingly, I find that the tenant did not over pay rent for 2014.

Pursuant to section 43 of the *Residential Tenancy Act*, I find that in January 2013, the landlord imposed a rent increase in contravention of the Regulations and therefore the tenant is entitled to recover the amount of the increase.

Accordingly I find that the tenant has established a claim of \$98.64 in overpaid rent.

The tenant has not yet returned the key to the landlord. Therefore I am dismissing this portion of the tenant's claim with leave to reapply after he has returned the key to the landlord and has proven that he paid a key deposit of \$25.00.

Overall the tenant has established a claim of \$98.64. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion:

I grant the tenant a monetary order in the amount of **\$98.64**.

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: July 21, 2015

Residential Tenancy Branch

