



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, MNDC, FF, MNR

Introduction

This hearing dealt with an application by the tenant seeking to dispute a rent increase, an order to have the landlord comply with the Act, regulation or tenancy agreement, a monetary order and an order to recover the filing fee for this application. The landlord has also filed an application seeking a monetary order and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence

The tenant gave the following testimony. The tenancy began on November 3, 2003 and ended on November 4, 2015. The tenants were obligated to pay \$1059.81 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit which has been returned. The tenant stated that his rent was raised to \$1037.00 in 2008. The tenant stated that the landlord gave him a rent increase to \$1059.81 in 2014 without providing the "Notice of Increase Form". The tenant stated that he is seeking the return of his "overpayment of rent" of \$364.96.

The tenant stated that water was included as part of his tenancy as reflected on the tenancy agreement. The tenant stated he was very happy with the well water service. The tenant stated that the landlord decided to connect to the "city line". The tenant stated that he was told that he had to cover those yearly costs of water. The tenant stated that he did so because he thought he didn't have a choice, until conferring with the Branch and realizing that water was included in his tenancy agreement. The tenant is seeking the return of the water charges of \$1525.48.

The tenant stated that he fully intended to move out by October 31, 2015 but fell a little behind in packing. The tenant stated that the delay was also caused by the carpet cleaners cancelling their appointment to clean the carpets for October 28, 2015 and rescheduling it to November 2, 2015. The tenant stated that the landlord gave him permission to stay a few extra days at no charge.

The landlord gave the following testimony. The landlord stated that he gave the tenant a Notice of Rent Increase form on February 22, 2014 with an effective date of June 1, 2014. The amount given was in accordance with the Residential Tenancy Regulations of 2.2% for an amount of \$22.81 per month. The landlord stated that he gave the tenant a copy of it and that the tenant paid it as required from June 1, 2014 to the end of his tenancy.

The landlord stated that when he switched from well water to metered city service he felt it was fairer to give the tenant the yearly bill as opposed to a monthly flat rate. The landlord stated that since the tenant was the person using the water he should be responsible to pay for it. The landlord stated that the tenant did not pay the water costs for 2015 and seeks \$305.67.

The landlord stated that he also seeks an order for unpaid rent. The landlord stated that the tenant gave notice to move out by October 31, 2015 but over held for 4 days and seeks the prorated amount of \$141.32. The landlord stated that he did not authorize the tenant to over hold the unit.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **each party must prove their own 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.

Firstly, I address the tenants' application and my findings as follows.

1. Overpayment of Rent - \$364.96

The tenant stated he did not receive the Notice of Increase Form to reflect the increase given in 2014. The landlord stated that he always gave the form when increasing the rent as evidenced by the tenants own documentation submitted for this hearing. The

landlord stated that tenant was selective in his memory and what he chose to submit. The landlord stated that he submitted a copy of it to the tenant as well as the Service BC office when making his application. The landlord stated that he doesn't know why it's not in the Branch file or what happened to it at Service B.C. The landlord stated that there is no trickery involved as the amount increased was in accordance with the Regulations and that the tenant paid the increased amount on the effective date showing that he received it.

I accept the landlords' version. The tenant clearly must have received it as he began paying the increased amount on the effective date, had he not received it the landlord stated that they would have been issues about the rent, which there wasn't. I have considered the position of both parties and reviewed the documentation provided. Based on the above and on a balance of probabilities I dismiss this portion of the tenants' application.

2. Water Bill – \$1525.48.

The tenant submitted a copy of the tenancy agreement that has the water "box checked off" as included with the rent. The landlord chose of his own volition to change the service and tried to pass those costs onto the tenant. In the landlords own tenancy agreement it states that "The landlord must not take away or make the tenant pay for a service facility that is already included in the rent". The tenant provided copies of his cancelled cheques to support this claim.

Based on the above I find that the tenant is entitled to the return of the amount he paid for water of \$1525.48.

I address the landlords claim and my findings as follows.

1. Water Bill - \$305.67.

As I have found that the landlord is responsible for this cost in the above claim, I dismiss this portion of the landlords' application.

2. Unpaid Rent - \$141.32.

The tenant acknowledges that he gave notice to vacate by October 31, 2015 but fell behind and vacated on November 4, 2015. The tenant stated he had the landlords' permission to stay a few extra days at no charge.

The landlord denies that he gave the tenant permission. Based on the above, I find that the landlord is entitled to the unpaid rent of \$141.32 as the tenant did over hold the unit without the landlords' permission.

The landlord is entitled to \$141.32. The tenant is entitled to \$1525.48. After "offsetting" the costs the tenant is entitled to \$1384.16.

Using the offsetting prevision under Section 72 of the Act, each party must bear the cost of their filing fee.

Conclusion

The tenant has established a claim for \$1384.16. I grant the tenant an order under section 67 for the balance due of \$1384.16. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 22, 2016

Residential Tenancy Branch