



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was assisted by her son. The Tenants had an advocate present. The hearing process was explained and the participants were asked if they had any questions. Both parties and the Tenant's advocate provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the course of this hearing there were discussions regarding settlement of all disputes between the parties. The Tenants allege they will claim against the Landlord for return of double the security deposit and for other damages. The Landlord alleged she has a claim against the Tenants for damages and cleaning of the rental unit. Despite discussing these matters with a view to settling, the parties were unable to come to an agreement to resolve these claims and I have only addressed the issues of rent being owed, the amount of rent being owed, and with the agreement of the parties the statutory compensation owed to the Tenants under a 2 Month Notice to End Tenancy for Landlord's use.

All other matters not described in my analysis or in this decision are unresolved and I have made no final decisions in those other matters. The parties are at liberty to file applications for matters not addressed in this decision.

Issue(s) to be Decided

Is the Landlord entitled to payment of rent from the Tenants?

What is the amount of rent that the Landlord is due from the Tenants?

Background and Evidence

The parties have been to one prior dispute resolution proceeding, the file number for which is referenced on the cover page of this decision. The previous matter involved the Tenants' application to cancel a two month Notice to End Tenancy and the Landlord's application for an order of possession. During the course of this earlier hearing the arbitrator severed claims made by both parties and did not deal with those. The parties made a limited settlement and an order of possession was granted to the Landlord.

In evidence the Landlord has supplied a copy of a 10 day Notice to End Tenancy issued to the Landlord by the Tenants indicating they are given the Landlord notice they were ending the tenancy effective on October 1, 2015. Section 50 of the Act allows the Tenants to end the tenancy with a 10 day notice in these circumstances, and section 50(3) provides that the Tenants are still entitled to the one month of compensation due under the two month Notice to End Tenancy.

The Landlord had claimed for two months of rent in the amount of \$3,000.00 for August and September of 2015, plus the filing fee for the Application. I note that during the course of the hearing before me the Landlord and the Tenants agreed that the Tenants had not been given the one month of compensation they were entitled to under the 2 Month Notice to End Tenancy and that amount should be accounted for in this decision.

The Landlord provided in evidence two cheques given to the Landlord by the Tenants in amounts of \$1,500.00 each. These cheques were supposed to pay for rent for August and September of 2015; however, one of the cheques was misdated as being for the 9th day of the month "01". The parties all agreed during the hearing that the intent of this cheque was for the 9th month and the first day of the month "01", in other words, September 2015 rent, not January 9th rent. The Tenants' advocate agreed this cheque was incorrectly dated and that this had not been noticed previously by either party.

Nevertheless, the Landlord had a voucher from the bank indicating these two cheques could not be cashed. The Landlord testified that the Tenants had put stop payments on these two cheques.

As for the amounts of rent due, the Landlord testified that she and the Tenants negotiated the rent increases over the years and they had made verbal agreements regarding the amount of rent to be paid. The Landlord testified that at one time there had been a written tenancy agreement between the parties, although she had no copy of this document as she alleged her late husband had misplaced it. The Landlord argued that if the Tenants did not agree to the amount of rent they should have gone to the branch and disputed the increase. The Landlord argued that the Tenants had paid the rent and therefore they accepted the rent at that amount.

The Landlord further testified that when she wanted to raise the rent to \$1,550.00, the Tenants informed her they were only willing to pay \$1,500.00. The Tenants paid this rent from June 1, 2014, until the tenancy ended on or about October 1, 2015, except for the final two months of August and September 2015, when they paid no rent.

In reply, the Tenants argued that they were entitled to one month of free rent under the two month Notice to End Tenancy. They acknowledged they owe the Landlord for one month, although they dispute the amount claimed by the Landlord.

The Tenants argued that the Landlord had illegally raised the rent in the past. The Tenants had submitted in evidence a calculation for the alleged over payment of rent for approximately the past 8 years. They argue that the Landlord did not increase the rent in accordance with the Act, and accordingly they should only owe the Landlord \$1,215.85 in rent for one month, based on their calculations.

The Tenants testified that they went to the Residential Tenancy Branch in 2013 when the Landlord wanted to increase the rent from \$1,450.00 to \$1,500.00. Their advocate alleged that they were given a piece of paper to give to the Landlord regarding the proper way to perform rent increases. The advocate alleged that the Landlord refused to read this. The Tenants alleged they were not informed of their rights, just given a piece of paper.

The Tenants provided receipts in evidence that indicate the rent paid following this was \$1,450.00, from March 1, 2013, until June 1, 2014, when the rent on the receipts increases to \$1,500.00. The Tenants had created the receipts themselves, testifying the Landlord refused to supply them with receipts for payment.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants failed to pay the Landlord for one month of rent. I also find the Landlord should have compensated the Tenants for the equivalent of one month of rent, in compensation for the 2 Month Notice to End Tenancy issued by the Landlord; therefore, I am only allowing the Landlord one month of rent. I find this compensates the Tenants for the one month of rent they are entitled to under the 2 Month Notice, as agreed to by the parties during the hearing.

I find the Landlord had insufficient evidence to prove that she had increased the rent in accordance with the requirements of the *Act*. Nevertheless, the Tenants are required

under section 26 of the Act to pay the rent, whether or not the Landlord is in breach of the Act, unless the Tenants had some authority under the Act not to pay rent.

In this instance, while the Landlord may have not correctly raised the rent, the Tenants were still required to pay the correct amount of rent. In other words, the Tenants might have deducted the portion of the rent that was improperly raised by the Landlord; however, here the Tenants put a stop payment on the rent cheques they had given the Landlord and they paid no rent. I find the Tenants did not have authority to stop paying all of the rent and breached section 26 of the Act.

In regard to the amount of rent owed to the Landlord, I do not find the Tenants may go back to the first alleged incorrect rent increase and attempt to recover all overpayments of rent for the past 8 to 10 years.

The Tenants are required under section 7(2) of the Act to mitigate their losses. Section 7 of the Act states:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenants should have taken steps several years ago to learn their rights and obligations under the Act and to recover any rent overpayments then. Ignorance of the law is not an excuse. Similarly, the Landlord should have learned that Part 3 of the Act and Part 4 of the Regulations which set out rent increase provisions that all landlords must follow when they want to increase the rent.

For example, a landlord must provide a tenant proper legal notice of a rent increase using the approved form; show calculations they made; allow the correct time the increase takes effect; and a landlord may only increase the rent to the amount allowable under the Act and Regulation. A landlord may also obtain a tenant's written consent to raise the rent above the allowable limits.

However, Policy Guideline 37 to the Act explains that mere payment of an incorrect rent increase does mean a tenant has agreed in writing to the rent increase. In other words an oral agreement is not valid as the rent increase must be in writing and simple payment of the rent does not mean acceptance of an incorrect rent increase.

I have also considered the legal doctrine of "laches" which provides that a party to a contract who considers the other party has breached the contract must act within a

reasonable time to have the breach corrected or loss compensated, failing which the party loses the right to claim any breach or loss. I find this applies to the Tenants who knew or ought to have known in 2013 that the Landlord was not increasing the rent in accordance with the Act. I note that I found it hard to accept their evidence that when they attended the Branch for advice they were simply given a piece of paper to give to the Landlord and were not informed of their own rights. Therefore, I find the Tenants should have acted at that time to try and recover any overpayments of rent and I do not find they can go back to the first incorrect rent increase.

This leads me to find, based on the evidence presented and on a balance of probabilities that both parties became aware of the rent increase requirements of the Act when the Tenants attended the branch in February or March of 2013 and both parties agreed during the hearing that the rent in March of 2013 was \$1,450.00. This leads me to find the rent payable for one month to the Landlord should be \$1,450.00.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$1,500.00** comprised of the one month of rent plus the \$50.00 fee paid for this application and I grant the Landlord an order under section 67 for the balance due.

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has established a claim for one month of rent as calculated above. The Landlord is issued a monetary order for \$1,500.00, payable by the Tenants.

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: April 20, 2016

Residential Tenancy Branch