



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:15 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 pm. The landlord/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that he personally served the tenant with his Application for Dispute Resolution ("ADR") package including the Notice of Hearing on January 20, 2016. The landlord provided a typewritten form indicating that a family member residing in the tenant's home accepted the package and signed for it. The landlord testified that the signee who received the landlord's ADR package was an adult who apparently resides in the rental unit. The typewritten form included a list of the items included in the ADR package. Based on the undisputed evidence submitted by the landlord, I find that the tenant was sufficiently served with the landlord's ADR package in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord testified that this month to month tenancy began on August 1, 2014. The landlord submitted a copy of the residential tenancy agreement showing a rental amount of \$1300.00 payable on the 17th day of each month. The landlord testified that the parties signed a new tenancy agreement dated January 8, 2016. The landlord

testified that the parties disagree about the amount of rent outstanding and owed by the tenant. The landlord testified that he continues to hold the tenant's \$1100.00 security deposit. The tenant paid a security deposit of \$650.00 on August 1, 2014 and a further \$450.00 of January 8, 2016.

The landlord sought \$900.00 from the tenant. The landlord claims that there is an outstanding balance owed by the tenant as a result of the signing of a new tenancy agreement.

Analysis

The landlord sought a finding that the tenant owes \$900.00 to the landlord and a monetary order against the tenant in that amount. When a party, in this case the landlord, applies for a monetary amount from another party, the landlord must provide sufficient proof that the other party is responsible for the amount sought.

The landlord testified that, as a result of a misunderstanding with respect to the current tenancy agreement, the tenant has failed to pay \$900.00. The landlord submitted rent receipts to show the payments made by the tenant under the previous tenancy agreement as well as copies of both tenancy agreements. The agreements show that the original tenancy agreement with a rental amount of \$1300.00 was replaced with a new tenancy agreement signed by both parties with a monthly rental amount of \$2200.00 thereby increasing the tenant's rent by \$900.00 per month.

The Residential Tenancy Act allows the landlord to increase the rent annually by an amount determined by the Residential Tenancy Branch. Section 43(1)(c) of the Act allows a rental increase for an amount beyond the allowable annual amount with a tenant's written agreement. Policy Guideline No. 37 addresses an agreement between parties for an additional rent increase in a residential tenancy.

Tenant May Agree to a Rent Increase Greater than the Prescribed Amount

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. The landlord must still follow requirements regarding the timing and notice of rent increases.

The tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant...

I find that, while the signing of the new tenancy agreement by the landlord and tenant may represent consensus by the parties to a new rental amount, the landlord has not followed the requirements of the Act in increasing the monthly rent. Given that the new residential tenancy agreement was signed by both parties on or about January 8, 2016 and that he served the tenant with his application with respect to this dispute, I find that the landlord must provide the tenant with the approved for rent increase to provide notice and information with respect to a rental increase. **After the provision of the rent increase form and a further three months as required by the Act, with the written agreement of the tenant, the rent increase may take effect.**

In addition to the landlord's failure to take the required steps in increasing the tenant's rent, I note that the landlord claims that an ambiguity in the tenancy agreements has resulted in an amount owed by the tenant to the landlord. The landlord's main motivation for applying for dispute resolution was to clarify what amount was owed by the tenant. With respect to the landlord's application and claim for unpaid rent, I refer to the legal rule of "*contra proferentem*".

Contra Proferentem is a rule applied when interpreting contracts. It means that if there is an ambiguous clause in a contract, it will be interpreted against the party responsible for drafting the clause. When a provision of a contract, (ie: the residential tenancy agreement) is unclear, a dispute should be decided in favour of the party who was not responsible for drafting – in this case, the tenant.

Although the landlord used a Standard Tenancy Agreement authorized by the RTB, the landlord as the party providing the Agreement bears responsibility for ensuring that the Agreement was completed properly and that there is no room for ambiguity (or misunderstanding) by either party. Section 13 (2)(f) of the Act provides that a tenancy agreement shall include standard terms, the date the tenancy starts and "the amount of rent payable for a specified period...[and] the day in the month, or in the other period on which the tenancy is based, on which the rent is due..." Rather than making a clear agreement regarding payment of rent by the tenant at the time of entering into a second contract, the landlord allowed ambiguity to remain between the parties.

Based on the fact that the landlord has failed to take the required steps in effectively increasing the tenant's rent by \$900.00 and that the landlord is responsible for the ambiguity between the parties regarding the terms of the payment of rent, I find that the landlord is not entitled to a monetary award against the tenant. I decline to issue a monetary order to the landlord.

As the landlord was not successful in his application, I find that the landlord is not entitled to recover his filing fee.

Conclusion

I dismiss the landlord's application in its entirety.

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: September 27, 2016

Residential Tenancy Branch