



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant states that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 12, 2016 and then again on November 17, 2016. The landlord's agent (the landlord) confirmed receipt of the packages as claimed by the tenant. The landlord states that the tenant was served with the landlord's submitted documentary evidence via regular post mail on November 22, 2016. The tenant confirmed receipt of the landlord's documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party, I am satisfied that both parties have been properly served as per section 90 of the Act.

The hearing commenced as scheduled but was unable to be completed due to extensive discussions. As such, an adjournment is required for more time to complete the hearing. The continuation date of this hearing was mailed along with the Interim Decision. The hearing was adjourned. Both parties were cautioned that no further evidence would be accepted and that neither party may submit any further evidence.

On March 3, 2017 the hearing was reconvened with both parties via conference call.

The tenant clarified that he seeks a monetary claim \$4,503.36 for recovery of an overpayment of rent due to illegal rent increases made by the landlord over a 3 year period.

At the end of the hearing the landlord's agent stated that he wished to change the mailing address for delivery of the decision. As such, the landlord's mailing address on file with the Residential Tenancy Branch shall be amended as confirmed by the landlord's agent.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy originally began on October 1, 2011 on a fixed term tenancy ending on September 30, 2012 with a \$1,400.00 monthly rent payable on the 1st day of each month.

The tenant seeks a monetary claim for \$4,503.36 for reimbursement of illegal rent increases made by the landlord. The tenant states that over a 3 year period the landlord had illegally increased the rent beyond the allowable rent increases as per the Act. This consists of:

\$796.32 Illegal Rent increases for October 2012 to September 2013
\$1,623.24 Illegal rent increases for October 2013 to September 2014
\$2,083.80 Illegal rent increases for October 2014 to September 2015

The tenant claims that after vacating the rental unit the tenant discovered that the landlord had been illegally increasing the monthly rent.

The landlord disputes this claim stating that the tenancy agreement is as claimed, but was subsequently renewed on a new 1 year fixed term tenancy by both parties on September 27, 2012 to begin on October 1, 2012 until September 30, 2013 with a \$1,466.36 monthly rent payable on the 1st day of each month. The landlord also claims

that this tenancy agreement was also subsequently renewed on a new 1 year fixed term tenancy by both parties on September 30, 2013 to begin on October 1, 2013 until September 30, 2014 with a \$1,535.27 monthly rent payable on the 1st day of each month.

The tenant confirmed the rental increase amounts, but disputed that no fixed terms were agreed to.

The landlord claims that his claim of the 1 year fixed term renewals are supported by the copy of the originally signed fixed term tenancy agreement dated September 9, 2011. The landlord clarified that on each renewal both the landlord and the tenant initialled the change on the original copy with the dates indicated. The landlord also claimed that this is supported by the email exchange between the landlord and the tenant dated June 7, 2012. The landlord noted that this was 3 months' notice regarding an increase in the monthly rent to \$1,466.36 which was negotiated between the parties prior to the effective date. The landlord referred to the tenant's response dated June 8, 2012 which states,

Yes that is fine.

In September when we renew the lease, I will provide 12 post-dated cheques to you with the new monthly rental amount of 1,466.36 for each months cheque.

The tenant argues that the tenancy following the initial 12 month agreement became a month-to-month tenancy and that the landlord's claim is in error. The tenant stated that there were no issues with each of the rental increases until after the tenancy had ended.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the tenant's claim relies upon his interpretation that the initial tenancy agreement of 12 months became a month-to-month tenancy as opposed to the

landlord's claim that this tenancy was renewed by a 12 month period, twice. I note that the signed tenancy agreement states in part,

The said Tenant(s) covenants with the said Landlord to pay rent at the rate of \$1,400.00 per month, on the 1st day of each month, commencing October 1, 2011 for a fixed lease term of twelve (12) consecutive months. Tenants to take early possession on September 18, 2011 at a pro-rate of \$606.58. Lease may be renewed at Owner's and Tenant's discretion...

The tenant's written submissions state in part,

...each increase was also first made known to the tenant at the time of the increase and took effect immediately after each 12 month period of the tenancy for three years after the initial 12 month fixed term ended, and it became a month-to-month tenancy for another three years less one month.

I find that the tenants claim that each increase took place immediately at the time of the increase is contradicted by the email exchange between the landlord and the tenant dated June 7, 2012.

The tenant provided undisputed affirmed testimony that he did not dispute the rental increases at the time of the increases as he had no issues regarding them, until the tenancy had ended.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant regarding the interpretation of the tenancy agreements. The tenant has failed to provide sufficient evidence that the tenancy became a month-to-month term instead of the 12 month fixed term as claimed by the landlord. I find that the landlord's claim more believable that after the initial 12 month period the tenancy was negotiated and renewed on a further 12 month period. This is supported by the landlord's evidence that the amendments to the original tenancy agreement were initialled by both parties and dated as showing an agreement to the original tenancy agreement. This is further supported by the email exchange dated June 7, 2012 showing the tenant's agreement to the rental increase approximately 3 months later. I find that the tenant's claim that these initials and dates on the tenancy agreement were only to confirm the tenant's continued agreement to the rules of the tenancy agreement. I find the landlord's version more compelling as each page is dated and initialled by both parties as was the date changed for the term on the tenancy agreement.

The legal principle of laches is based on the concept that equity aids the vigilant and not those who slumber on their rights. In this case, I find that the tenant ought to have diligently asserted his right or claim by making an application for dispute resolution during his tenancy to address the rental increases. The tenant clearly stated that he had no issues with the rental increase until after the end of the tenancy. I find that this is supported by the landlord's claims that each rental increase was negotiated between the two parties as shown by the email dated June 7, 2012. In failing to make an application at or near to the time the problems arose, the tenant did not allow the landlord to respond effectively to the tenant's claim.

Conclusion

The tenant's monetary application is dismissed without leave to reapply.

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 3, 2017

Residential Tenancy Branch

