



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR MNR MNDC DRI OLC FFL

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the Act"). The landlords applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage or loss pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied under the Act for: cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and a determination regarding a dispute of a rent increase by the landlords pursuant to section 43.

Both parties attended the hearing (1 landlord representing both landlords described hereinafter as "the landlord" and the tenant) and they were each given a full opportunity to be heard, to present their testimony, and to make submissions. Both parties confirmed receipt of the other's Application for Dispute Resolution packages as well as evidentiary materials submitted for this hearing. The tenant testified that he has vacated the rental unit therefore he withdrew his application to cancel the notice to end tenancy. The landlord withdrew his application for an Order of Possession for unpaid rent. Both parties continued to seek a monetary amount against the other.

Preliminary Matter: Amendments at Hearing

The landlords originally sought a monetary amount for \$1971.00 for an outstanding rental amount of \$471.00 from December 2017 and 1 months' unpaid rent in the amount of \$1500.00 rent for January 2018. However, as of the date of this hearing, the landlord testified that the tenant had paid the December 2017 amount outstanding (\$417.00).

The landlords requested to amend his application from \$1500.00 remaining unpaid in rent noted in his original application to seek a total of \$3000.00. This new amended amount would encompass \$1500.00 for January 2018 rent and \$1500.00 for loss of rent in February 2018. An amendment must be done formally, through an application to the Residential Tenancy Branch and it must be done prior to the hearing. An amendment sought at the time of the hearing will often not allow the other party to be aware of the amendment beforehand therefore the other party does not have the ability to respond or prepare to respond to the amendment and its contents.

As the remaining issue at this hearing is whether the landlords increased the rent in a way that complies with the Act, I find that a monetary reckoning will be required. I find that the tenant could have reasonably anticipated that the landlords would seek to recover the February 2018 lost rent and therefore, I will consider the landlords' application for \$3000.00 against the tenant.

The tenant also sought to amend his application. The tenant originally sought \$1884.00 to recover \$471.00 in what he describes as an overpayment in rent from August 2017 to November 2017. At this hearing, the tenant sought to amend his application to request a monetary order of \$2355.00 to include an additional \$471.00 overpayment of rent in December 2017. For the same reasons indicated above with respect to the landlords' application to amend, I allow the tenant's amendment amount to be considered in making an ultimate decision in this matter.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and damage or loss?

Is the tenant entitled to a monetary order for damage or loss?

Has the tenant's rent been increased in error? Is the tenant entitled to an order that the landlords comply with the Act? Are the landlords and/or the tenant entitled to recover their filing fees for their respective applications?

Background and Evidence

This tenancy began in 2011 as a month to month tenancy. The landlord claims that the correct rental amount for this tenant was \$1500.00 payable on the first of each month. The tenant claims that the correct rental amount should have been \$1029.00 payable on the first of the month. The tenant testified that to assist the previous landlord financially, as a personal favour, he temporarily increased his rent to \$1150.00 but there was no formal rent increase and no documentation. Neither party submitted a document

reflecting notice of a rent increase in accordance with the Act. The residential tenancy agreement was submitted as evidence for this hearing. The agreement reads that the rental amount, as of the date of the agreement (May 4, 2017 signed by both parties) was \$1500.00.

The landlord testified that the tenant was required to pay \$1500.00 monthly rent from the start of this tenancy and relied on the residential tenancy agreement as proof. Both parties agree that the residential tenancy agreement is accurate in that no security deposit was provided by the tenant for this tenancy. Otherwise, the residential tenancy agreement is a blank document: there was no start date to the tenancy provided, no indication of whether a security deposit was or was not required; and no indication of the due date of the rent. I note that the signature and name of the landlord on the residential tenancy agreement submitted was the name provided by the parties as the previous landlord.

The landlord testified that the tenant gave notice to the landlord approximately one week prior to the tenant vacating the rental unit. The landlord testified that the tenant simply told him verbally on or about December 23, 2017 that he intended to vacate the unit "immediately"). The landlord testified that the tenant vacated the rental unit on January 6, 2018). The landlord testified that the tenant did not return the keys until one week after January 8, 2018. The landlord testified that the tenant left a variety of items inside the rental unit.

The tenant testified that he advised the landlord on December 23, 2017 that he intended to vacate the rental unit on January 6, 2018. The tenant testified that he did vacate the rental unit on that date but that he had to leave some items behind. The tenant also testified that he put the keys to the rental unit in the mailbox at the property. He testified that, after putting the keys in the mailbox, he got worried, went to check on them a couple days later and, as they were still there, he took them and kept them. He did not advise the landlord he had the keys but returned them when the landlord called to ask him to return the keys.

The landlord testified that, after his application but prior to this hearing, the tenant had paid the December 2017 amount outstanding (\$417.00). As indicated above, the landlords amended their claim to include both January 2018 unpaid rent and February 2018 rental loss. With respect to the amount of rent owed by the tenant during this tenancy, the landlord testified that the tenant knew that the monthly rental amount would be \$1500.00 when he took possession of the home. He testified that he believed the tenant was paying this rental amount to the previous landlord and he relied on the residential tenancy agreement submitted as evidence for this hearing. The landlord

testified that he was never provided with a rental agreement from the previous landlord or the tenant that listed a rental amount of \$1500.00. The landlord submitted that the tenant gave him post-dated cheques in the amount of \$1500.00 up to November 2017.

The tenant testified that he paid \$1029.00 up to and including December 2017. He testified that his rent had been raised by the previous landlord from \$1000.00 per month in June 2016. The tenant testified that, throughout October and November 2017, he paid an increased amount of \$1150.00 to assist his friend and former landlord with mortgage payments. The tenant testified that he never agreed to pay \$1500.00. He testified that the tenancy agreement signed by both the tenant and the landlord was signed under duress – he felt he had no choice but to sign the agreement. The tenant did not respond to the landlord's claim that he had given post-dated cheques to the landlord for rent in 2017.

The landlord testified at several different points in the hearing that the rental amount had always been \$1500.00. He explained that the tenant's rental amount had been decreased by the previous landlord because the tenant mowed lawns and maintained the property. The landlord testified that the tenant was advised that this would no longer continue when he took possession as the landlord intended to have a professional landscaping company take over the lawn and yard maintenance. The tenant testified that he has his own landscaping business and so doesn't need money from his landlord for mowing lawns.

The tenant submitted that, since no form or notice was provided by the landlords to notify him of the rental increase, he should not have been required to pay the increased rental amount of \$1500.00.

Analysis

The remaining issues, after the withdrawal of the landlords' application for an Order of Possession as well as the tenant's application to cancel the landlords' Notice to End Tenancy, are whether the tenant has left a balance of rental arrears owed to the landlords or whether the landlords are required to return an amount to the tenant in overpayment as a result of incorrectly instituted rental increase. Therefore, the remainder of the issues between the parties relate to whether the current landlords increased the rent at the rental unit prior to the tenant vacating the rental unit.

The landlords are obliged to abide by the Act as well as the Residential Tenancy Branch Regulations in increasing the rent. However, in this particular case, the landlord argues that he did not increase the rent at all. The tenant argues that the landlords increased

the rent and did so improperly. The tenant also argued that the landlords increased the rent beyond the allowable annual rental increase for the rental unit.

Given the conflicting testimony regarding the amount of rent during this tenancy, a determination regarding the rent amount hinges on a determination of credibility. In addition to the manner and tone (demeanour) of the parties' evidence, I have considered their content, whether it is logically consistent - whether it is consistent with the other claims regarding this tenancy.

The landlord indicated that he was frustrated by this tenancy however his demeanor during the hearing has convinced me of his credibility. He answered all questions asked of him in a calm and candid manner, and he did not waver from his version of events. The landlord consistently argued that the tenant was required to pay \$1500.00 monthly rent. This was supported by the scant residential tenancy agreement signed by both the tenant and the original landlord dated at the outset of this tenancy. The landlords' application for 1 month unpaid rent and 1 month of rental loss suggests that the landlords' application was made on the basis that the tenant had paid the rent in full (\$1500.00) and on time in accordance with the residential tenancy agreement and the *Residential Tenancy Act*.

The landlord provided undisputed testimony and some admissions with respect to other areas of relevance, including the fact that the residential tenancy agreement should have been completed more thoroughly and that he relied too heavily on the previous landlord when acquiring this property, particularly since the previous landlord and tenant were friends.

The tenant's evidence, on the other hand, was less credible. The tenant did not produce another competing tenancy agreement or provide his previous landlord as a witness, even though he conceded that the previous landlord was a friend of his. I find that the tenant's story varied in that, initially in his testimony, he indicated that the landlords had increased his rent but that he had done so without the proper notice. Later in his testimony, the tenant indicated that the landlord had *forced* him, under duress to sign the residential tenancy agreement (backdated) and to pay the rent increase amount. The tenant did not respond to the landlord's claim that he had post-dated cheques from the tenant until November 2017 in a rental amount of \$1500.00. Further, I find his version of events regarding the return of the rental unit keys somewhat implausible.

I have considered the credibility of both party's testimony as well as the burden of proof, applied to both parties on a cross application. I accept the landlord's testimony that the \$1500.00 rental amount was the correct rental amount prior to his possession/taking over as landlord of the residential premises. Further, I find the tenant's testimony less

plausible and consistent. I accept the landlord's testimony that the tenant ultimately paid the whole \$1500.00 rent due in December 2017. This does not determine the matter conclusively as payment by the tenant of a rent increase does not in itself mean the rent increase is accepted. In this case however, given all of the circumstances, I find that the tenant's payment of rent in December 2017, after the date that the landlords made an application to the Residential Tenancy Branch and over a month after he had submitted his own application of dispute.

As I accept the landlord's version of events over the tenant's version, I dismiss the tenant's application for a monetary order as compensation for an overpayment of rent and I dismiss the tenant's application for an order requiring the landlord to comply with the *Act*. with respect to the tenant's application for a determination regarding the landlord's rent increase, I find that the landlords did not increase the rent and therefore no further determination is required.

I dismiss the tenant's application in its entirety.

The landlords applied for a monetary order to compensate him for January 2018 rent. The tenant did not dispute that this rental amount was unpaid – however the tenant disputed the amount of the rent. As I have found that the rental amount required to be paid by the tenant was \$1500.00, I find that the landlords are entitled to \$1500.00 in unpaid rent from the tenant.

The landlords also sought to recover February 2018 rent totaling \$1500.00. The landlord testified that he was unable to re-rent the unit after the tenant vacated. The landlord provided undisputed testimony that he had to remove items left behind by the tenant after he vacated. In fact, the tenant confirmed that he left items behind in the rental unit. The landlord also gave undisputed testimony that the tenant gave him very little notice when he vacated the rental unit (less than two weeks). The landlord provided evidence that he attempted to re-rent the unit and listed both online and offline advertisement sources that he uses when renting. He testified that he put up the notice approximately 5 days after the tenant vacated the rental unit. He testified as of the date of this hearing, the landlords have not re-rented the unit. I find that the tenant's lack of sufficient notice, leaving items in the unit and other actions led to the landlords' inability to re-rent the unit immediately. Therefore, I find that the landlords are entitled to recover \$1500.00 for February 2018 rental loss.

No security deposit was provided for this tenancy and therefore, the tenant is required to pay a total of \$3000.00 to the landlord. As the landlords were successful in this application, I find that the landlords are also entitled to recover the filing fee for this

application.

Conclusion

I issue a monetary order to the landlords in the amount of \$3100.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 21, 2018

Residential Tenancy Branch