



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

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

- an order regarding the tenants' dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and Tenant S.P. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant S.P. (the tenant) stated that they were representing the interests of both tenants in this matter.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which were sent to them by way of registered mail on October 11, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and an evidentiary package.

The landlord confirmed that they did not submit any evidence to the Residential Tenancy Branch (RTB) or to the tenants.

Issue(s) to be Decided

Are the tenants entitled to an order regarding the tenants' dispute of an additional rent increase by the landlord?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on May 01, 2017, with a monthly rent of \$1,600.00, due on the first day of each month, and that they paid a security deposit in the amount of \$800.00.

The tenants provided in written evidence:

- A copy of an e-mail exchange on September 28, 2018, between the landlord's realtor and the tenants regarding the landlord's purchase of the rental unit. The landlord's realtor states that the tenants can stay but requests the tenants to pay \$1,800.00 in monthly rent going forward. The tenant requests information to send funds electronically;
- A copy of an e-mail from the tenant to the landlord's realtor on September 30, 2018, in which the tenant asks if the realtor is aware that the tenants currently pay \$1,600.00 in monthly rent;
- A copy of an e-mail exchange on October 01, 2018, in which the landlord's realtor states that they received an e transfer in the amount of \$1,200.00, that the landlord's costs for the rental unit is \$2,000.00 but they are only requesting \$1,800.00. The e-mail goes onto state that the landlord can serve notice or the tenants can consider the e-mail as notice to increase rent. The tenant responds that the difference in rent is being sent shortly;
- A copy of an e-mail dated October 02, 2018, from Tenant S.B. to the landlord's realtor, stating that the landlord is not allow to raise the rent more than 2.5% and that their tenancy agreement for \$1,600.00 in monthly rent remains in place until increased in accordance with the *Act*. The tenant requests the landlord to return the \$200.00 overpayment for the October 2018 rent that was paid; and
- A copy of an e-mail dated October 05, 2018, from the landlord to the tenants stating that the tenants paid \$1,800.00 for rent as agreed to by Tenant S.P. and, as it was mutually agreed upon between the parties, the rule for rent increases does not apply.

The tenant submitted that their previous tenancy agreement was grandfathered in at the tenants' current monthly rent amount of \$1,600.00. The tenant testified that the landlord's realtor had suggested that the tenants pay \$1,800.00 in monthly rent and that if the tenants did not agree to the rent increase, the landlord would evict the tenants.

The tenant stated that they were not able to contact the RTB until after the day that the rent was due and so they paid the requested amount so as to not receive a notice to end tenancy. The tenant submitted that, once they had been informed by the RTB of their rights under the Act, they informed the landlord that they did not agree to the rent increase. The tenant indicated that they then requested the landlord to return the overpayment of the October 2018 rent in the amount of \$200.00. The tenant stated that they did not pay an additional \$200.00 for the November 2018 rent.

The landlord stated that, once the sale of the rental unit was completed, they requested the tenants to pay a rent increase in the amount of \$200.00 in order to cover the landlord's cost of the mortgage. The landlord submitted that the tenants agreed with the rent increase when they paid the requested amount. The landlord indicated that they also have strata fees above what they are seeking from the tenants but that the landlord is trying to be reasonable in the amount of the requested increased rent. The landlord maintained that it does not make sense for them to pay more for the mortgage than they are receiving in rent. The landlord stated that if the tenants do not agree to the rent increase, it will make more sense for the landlord to give notice to live in the rental unit.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Part 3, section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the *Act*.

Having reviewed the evidence and affirmed testimony, I find that the tenants did not agree to the landlord's proposed rent increase of \$200.00 per month under section 14 of the *Act*. I find that the tenant wrote to the landlord on September 30, 2018, to advise the landlord of their current rent in the amount of \$1,600.00 after the landlord had requested the increased rent on September 28, 2018. Although it is undisputed that the tenants paid an extra \$200.00 for the October 2018 rent, I find that it was only after the landlord indicated that he would serve a notice to end the tenancy on October 01, 2018 and that the tenants only paid the requested increase to avoid receiving a notice to end tenancy.

Based on a balance of probabilities, I accept the tenant's testimony that the tenants were not aware of their rights under the *Act* and they were concerned about being evicted if they did not pay the requested amount. I find that the tenants took action to minimize their loss by contacting the Residential Tenancy Branch as soon as they were able to. I find that the tenants then advised the landlord within a reasonable period on October 02, 2018, that they did not accept the rent increase and requested the overpayment of rent back. I find that the tenants did not continue to pay the increased amount of \$200.00 after providing the landlord with their position on the rent increase.

I find that the rent increase given to the tenants by e-mail on October 01, 2018, was not in compliance with the *Act* as it was not given to the tenants in the approved form and was for more than the allowable rent increase permitted. I find that the monthly rent is \$1,600.00, as per the tenancy agreement with the previous landlord.

Section 43(5) of the *Act* establishes that if a landlord collects a rent increase that does not comply with Part 3 of the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. Therefore I allow the tenants to deduct \$200.00 from their next rent payment to recover the overpayment paid to the landlord.

As the tenants have been successful in their application, I allow them to recover the filing fee for this Application.

Conclusion

I **order** that the monthly rent is \$1,600.00, as per the tenancy agreement, and for the landlord to comply with the *Act* for all future notice of rent increases.

Pursuant to section 72 of the *Act*, I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$300.00, to recover the overpayment of rent for October 2018 and to recover the filing fee paid for this application.

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: November 20, 2018

Residential Tenancy Branch