Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, OT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 04, 2018 (the "Application"). The Tenant sought compensation for monetary loss or other money owed, return of the security deposit and reimbursement for the filing fee.

This matter came before me January 03, 2019 and March 07, 2019. Interim Decisions were issued January 17, 2019 and March 07, 2019. This decision should be read with the Interim Decisions.

The request for return of the security deposit was dealt with in the January 17th Interim Decision and will not be dealt with in this decision.

I addressed service in the January 17th and March 07th Interim Decisions and therefore I will not deal with service issues in this decision.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The tenancy agreement between the parties was addressed in the January 17th Interim Decision and will not be addressed in this decision.

The Tenant confirmed at the first hearing that he is seeking the monetary compensation outlined in the Monetary Order Worksheet which includes the following:

1. $12,378.83 for overpaying rent;
2. $11,545.00 for no septic or toilet; and
3. $5,400.00 for propane.

The Tenant submitted written submissions that seek different amounts. The only amounts I will consider are those outlined in the Monetary Order Worksheet given these are the amounts the Tenant confirmed he is claiming for at the first hearing.

$12,378.83 for overpaying rent

The Tenant states in his written submissions that the Landlord constantly looked for excuses to raise the rent beyond legal limits. The Tenant states that he never agreed to the rent increases.

The Tenant submitted an outline of what he says were the rent increases compared to the allowable rent increases under the *Residential Tenancy Act* (the "*Act*"). It shows that he paid the following:

- $675.00 in 2010 and 2011
- $875.00 in 2012 and 2013
- $975.00 from 2014 to 2016
- $989.00 in 2017 and 2018

The Tenant pointed to an email dated November 10, 2015 in which the Landlord advised of a rental increase of $75.00 per month starting January 01, 2016 due to increased costs of living.

The Tenant testified that the increase from $975.00 to $989.00 was due to bank fees requested by the Landlord in an email dated February 05, 2016.

The Tenant submitted that the rent increases exceeded the amount permitted under the *Act*.

The Tenant testified that the rent increases were never set out on an RTB form. I asked the Tenant how the rent increases came to be, and he said some were verbal and some were done by email. He said he was pressured into agreeing to the rent increase imposed in 2016.

The Landlord testified that the only rent increase imposed was in the email from November 10, 2015. The Landlord testified that he asked the Tenant if he would agree to the increase and the Tenant did agree.

The Landlord testified that rent started at $675.00. He said the Tenant then paid $100.00 into a separate account for propane.

The Landlord testified that him and the Tenant agreed verbally in 2010 or 2011 that the Tenant would pay an additional $25.00 per month to have someone cut the grass. He said this was a side agreement and nothing to do with rent.

The Landlord testified that him and the Tenant made another agreement about the Tenant paying a further $100.00 for additional services.

The Landlord testified that his bank charged $7.50 to accept e-transfers which is how the Tenant paid rent. The Landlord said he asked the Tenant to pay by another method, but the Tenant paid for the fee instead.

The Landlord relied on the tenancy agreement addendum which states that the Tenant agrees to pay $100.00 per month to be held on account for propane usage and refilling as well as fireplace cleaning. Both parties signed the addendum and the Tenant agreed it is accurate during the hearing.

The Landlord testified that the outline of rent payments submitted by the Tenant is incorrect and that the Tenant was paying $775.00 at the outset for rent and propane costs.

In reply, the Tenant pointed to an email dated February 05, 2016 which states “Thanx for the rent !!!! Please add on the 14$ for your form of payment costs, total of 989$...” He pointed out that the email only speaks to rent and not side agreements.

The Tenant acknowledged that he paid rent and propane together.

I asked the Tenant if there were further documents showing the payments were rent increases. He pointed to an email dated December 01, 2015 from the Landlord which states that the Tenant will have to pay an extra $120.00 in addition to the rent due to a high power reading. The email also states:

> P.S. Also just a friendly reminder the monthly rate starting Jan. 1st is 975$. You are free to pay any way you like However if your form of payment incurs an additional fee that needs to added…”

The Tenant said he did not recall what the agreement between him and the Landlord for a further $100.00 could have been for and said he would expect it to stand out in his mind. He said he did not recall agreeing to the $25.00 to cut grass and pointed out that there is snow at the rental unit from October to June.

The Landlord made further submissions. He said he was charged $14.00 by his bank for e-transfers at first and this changed to $7.50 when he changed banks.

The Landlord submitted that the $25.00 for grass cutting was based on his calculation of the cost for summer split over the year.

The Landlord submitted that the emails referring to rent being $989.00 and $975.00 do not show that rent was these amounts and that he was using “rent” to capture the total amount owing.

The Landlord said the agreement about the $100.00 was for extra parking and electricity because the Tenant was using a lot of electricity. He said electricity was included in the tenancy agreement but within reason. He said these amounts were agreed to with a handshake.

The Tenant testified that he did not agree to pay an extra $100.00 each month for extra parking and electricity.

In relation to the $14.00 bank fees, the Tenant pointed to documentation showing that the Landlord switched banks May 25, 2015 and submitted that the timing is not consistent with what the Landlord is stating as the email about bank fees was dated January 06, 2016.

The Landlord replied to the bank fee issue stating that he did not realise the change until a month or so later and his email was based on the previous amount.

$11,545.00 for no septic or toilet

The Tenant stated the following in his written submissions. During the winter of 2016 to 2017 the cabin drains froze several times. The toilet had backed up and would not flush. Plunging did not work and salt did not penetrate the blockage which was deemed to be ice. The Tenant let the Landlord know. The Landlord told the Tenant to come get an exposed flame propane torch to put on the pipes under the house. The Tenant refused to do so given the fire hazard. The Landlord then did so; however, the pipes froze again that evening. The Landlord never fixed the problem which left the residence without bathroom facilities. Weeks later the pipes thawed. The drain froze again in February of 2018. The Tenant received an email February 26, 2018 from the Landlord stating he had removed the toilet for repairs. The toilet was never reinstalled for the five-month duration of the tenancy.

The Tenant testified as follows in relation to the septic and toilet issue.

The email dated February 06, 2017 supports that the cabin drains froze in winter of 2016 to 2017. There was a blockage somewhere that caused the pipes to freeze. The email dated February 26, 2018 supports that the drains froze again in 2018. The Landlord is responsible for septic tank issues during the tenancy. The septic tank was never inspected or serviced during the tenancy. He has no idea what the issue was, he just knows the drains froze.

He could not use the toilet or drains in the rental unit. He could not stay in the house without a toilet. He is seeking all his rent back from February of 2017 on because the Landlord did not fix the toilet.

The Tenant pointed to photos submitted in relation to this issue. The Tenant pointed to email documents labelled 2018FEB18FROZENDRAINS.pdf and 2018FEB24WATERANDPROPANE.pdf as well as an email from February 26, 2018.

The Landlord pointed to an email he sent dated February 26, 2018 about thawing the drain. He said that he did remove the toilet but that the Tenant was going to put it back on himself as it was a quick job. The Landlord said he never received a request from the Tenant to put the toilet back on. The Landlord testified that both years had extremely cold winters. He said the pipes had not froze in the previous six years. The Landlord testified that he fixed the problem within 48 hours in 2017. He said he put heat on the drain and it thawed out. He said the same thing happened the following year.

In relation to the email dated February 26, 2018, the Landlord testified that he had wanted to do a larger job in relation to the pipes but did not get around to doing it. He said this was extra work and that everything was functional regardless. The Landlord testified that there was nothing wrong with the septic system and pointed out that the Tenant has no evidence that there was an issue with the septic system. He said the issue occurred one time in 2017 and one time in 2018 and that the issue was fixed within 48 hours and there were no further problems.

The Landlord referred to a witness statement from his wife and from the new tenants stating there is nothing wrong with the septic system.

The Tenant stated that he did not receive the Landlord's wife's statement.

$5,400.00 for propane

The Tenant testified as follows. From the start of the tenancy, the Landlord ordered propane. He never saw any source documents from the propane company. One of the invoices submitted in evidence shows multiple deliveries were made and that the amount delivered was higher than the propane tank capacity. This raised concerns.

The Tenant pointed to rental receipts as evidence and said he just paid the Landlord the amount requested for propane.

The Tenant pointed to no evidence that the amounts paid were in fact incorrect or that he in fact overpaid any amount for propane.

The Landlord testified that the Tenant did not overpay for propane and denied that the Tenant ever paid for the Landlord's propane.

I have read the Tenant's and Landlord's written submissions on the issues raised and do not find that they add to what is outlined above.

Analysis

Section 7 of the *Act* states:

> 7 (1) If a landlord…does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord…must compensate the [tenant] for damage or loss that results.
>
> (2) A…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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

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.

$12,378.83 for overpaying rent

Part 3 of the *Act* states:

> 41 A landlord must not increase rent except in accordance with this Part.
>
> 42…
>
> (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
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> (3) A notice of a rent increase must be in the approved form.
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> (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.
>
> 43 (1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection (3), or
>
> (c) agreed to by the tenant in writing…
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> (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The Tenant took the position that the differences in rent amounts were due to illegal rent increases. The Landlord took the position that the differences were due to side agreements for additional services.

It is the Tenant who has the onus to prove that illegal rent increases resulted in him paying more rent than he legally should have.

The evidence the Tenant pointed to during the hearing in support of his position included his outline of payments, the November 10, 2015 email, the February 05, 2016 email and the December 01, 2015 email.

The Tenant submitted rent receipts and banking documents in relation to rent. He did not go through these during the hearing or explain these. These do not support the outline of rent amounts provided by the Tenant and referred to above. The documents show the Tenant was paying $900.00 in rent in 2014 and 2015, not $975.00. They also show he was paying $989.00 in 2016.

I accept that the rent was increased in January of 2016 by $75.00 as the parties agreed on this.

I do not find that the February 05, 2016 email is clear evidence that there had been rent increases versus side agreements as the email does not clearly state this.

In the December 01, 2015 email, I find that the $120.00 referred to appears to be a one-time cost and not a monthly rent increase given the language used.

Further, I do not find the December 01, 2015 email stating “the monthly rate starting Jan. 1st is 975$” to be clear evidence that this was a rent increase versus side agreements between the parties given the brevity of the email and language used.

The Tenant acknowledged that he paid for rent and propane together. Propane was not included in the rent of $675.00 as is clear from the tenancy agreement. I find that this cost accounts for at least a portion of the difference between the $675.00 noted in the tenancy agreement and the amounts paid.

I do not accept that the increase from $975.00 to $989.00 was a rent increase as the Tenant acknowledged this was due to bank fees. I accept based on the testimony of the parties and evidence submitted that the bank fees related to the Tenant’s chosen form of payment.

The Landlord acknowledged that the Tenant paid $100.00 for extra parking and electricity. I do find that an increase in electricity costs is a rent increase as the rent included electricity as is clear on page two of the tenancy agreement. I note that parking was include as well; however, only for three vehicles.

The Tenant said he did not agree to pay $100.00 for extra parking and electricity.

Neither party pointed to any documentation in relation to the $100.00 for extra parking and electricity. I am unable to tell which portion of the $100.00 was for extra parking and which for electricity based on the testimony and evidence pointed to during the hearing. Further, the Tenant did not agree he paid this.

The Tenant has only proven the rent increase of $75.00 in January of 2016. The Tenant has failed to prove that there were any further rent increases imposed or the amounts of those rent increases.

The maximum allowable rent increase for 2016 was 2.9%. Therefore, the allowable rent increase for 2016 was $19.57, well below the $75.00 imposed.

The Landlord testified that the Tenant agreed to this increase. The Tenant testified that he was pressured into agreeing. I do not accept this. The email outlining the rent increase does not support that the Landlord pressured the Tenant into agreeing to the increase. The Landlord submitted the Tenant's reply which does not support that he was pressured into agreeing. The Tenant has submitted no evidence to support his position that he was pressured into agreeing.

However, Policy Guideline 37 addresses rent increases and states:

> A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.
>
> The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.
>
> Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

[emphasis added]

I do not find the email from the Tenant sufficient to constitute an agreement in writing. Nor was the email signed given the nature of the communication. Further, I am not satisfied the Landlord still followed the requirements in the *Act* in relation to timing and notice of the rent increase as no evidence was pointed to during the hearing to show this occurred.

Therefore, I accept that the Landlord breached Part 3 of the *Act*.

However, I do not accept that the Tenant did anything to mitigate his loss. He agreed to pay the rent increase. I do not accept that he did so due to pressure from the Landlord. There is no evidence that the Tenant disputed the rent increase with the Landlord. He did not dispute the rent increase with the Residential Tenancy Branch until after the tenancy was over which was approximately two and half years later. This despite the tenancy agreement he signed setting out the rules around rent increases on page four of six.

I find the Tenant is entitled to recover overpayments for two years. The Tenant is awarded $1,800.00.

$11,545.00 for no septic or toilet

Landlords are required to maintain the rental unit and property pursuant to section 32 of the *Act*.

The Tenant raised two issues in relation to the toilet. First, that the pipes froze rendering the toilet unusable. Second, that the Landlord removed the toilet and never reinstalled it.

I have reviewed the evidence pointed to during the hearing regarding this issue.

I do not find the photos submitted to assist in relation to the pipes freezing or the cause of this.

The emails submitted show that the pipes froze February 05, 2017 and the Tenant let the Landlord know. The emails show the Landlord responded promptly with a suggestion to address the issue and an offer to address the issue himself. There is no

further written communications from 2017 about this that were pointed to during the hearing.

The Tenant took the position that it took weeks for the issue to be resolved. The Landlord denied this. The emails show the Landlord responded promptly to the issue when raised by the Tenant. The Tenant has not pointed to sufficient evidence supporting his testimony that the issue was not resolved for weeks. Nor has the Tenant pointed to evidence showing he let the Landlord know in 2017 that there continued to be an issue. I am not satisfied the Landlord breached the *Act* by failing in his obligations to maintain the property in 2017.

The emails show the pipes froze again February 24, 2018 and the Tenant let the Landlord know this. The emails show the Landlord thawed out the drain February 26, 2018 and removed the toilet. The emails also show the Landlord told the Tenant he could use his toilet or they could put the toilet back on. The Landlord also told the Tenant what he proposed to do about the issue. The Tenant replied to this stating in part, “No problem…” The Tenant did not point to any further evidence that he asked the Landlord to put the toilet back on.

I acknowledge that the Landlord wrote back stating “this year I will fix that drain once and for all, was supposed to do it last summer…” However, the emails show the Landlord did address the issue February 26, 2018. I understand the Tenant to take issue with the Landlord not putting the toilet back on. This email from the Landlord is not relevant to that issue.

I am not satisfied that the Landlord failed in his obligations to maintain the rental unit or property by failing to put the toilet back on as I am satisfied he offered to do so and there is no evidence that the Tenant subsequently asked him to do so. If the Tenant wanted the Landlord to put the toilet back on, he should have asked the Landlord to do this. I also note that the Tenant failed to mitigate any loss by failing to ask the Landlord to put the toilet back on.

The Tenant is not entitled to compensation for this issue. This aspect of the Application is dismissed without leave to re-apply.

$5,400.00 for propane

The Tenant did not point to any evidence showing he ever overpaid for propane. The Landlord denied that the Tenant ever overpaid for propane. It is the Tenant who has the onus to prove the claim. Given the differing testimony, and absence of evidence to support the Tenant's position, the Tenant has failed to prove that he overpaid for propane and this aspect of the Application is dismissed without leave to re-apply.

Given the Tenant was partially successful, I award the Tenant $100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant is awarded $1,800.00 as compensation for an illegal rent increase. The Tenant is not entitled to compensation for the remaining issues. The Tenant is awarded reimbursement for the $100.00 filing fee. The Tenant is issued a Monetary Order for $1,900.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order 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 *Act*.

Dated: May 29, 2019

Residential Tenancy Branch