Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant with the initials "R.M." stated that on February 21, 2019 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch on May 03, 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 08, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to each Tenant at the service address provided on the Application for Dispute Resolution, via registered mail, on May 08, 2019. The Tenant with the initials "H.S." acknowledged receiving this evidence. The Tenant with the initials "R.M." stated that he moved from the service address provided and he has not received, or seen, the evidence submitted by the Landlord.

The Landlord was advised that his evidence could not be accepted, as it had not been received by the Tenant with the initials "R.M.". The Landlord was advised that the hearing would proceed; that he could speak to his evidence during these proceedings; and that if, at any time during the hearing, he believed it was necessary for me to view those documents he could request an adjournment for the purposes of re-serving that evidence to the Tenant with the initials "R.M.". At the conclusion of the hearing the Agent for the Landlord declared that the Landlord did not require an adjournment for the purposes of re-serving the Landlord's evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All of the evidence accepted as evidence for these proceedings has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Has there been a rent increase that does not comply with the *Residential Tenancy Act (Act*) and, if so, are the Tenants entitled to a rent refund?

Background and Evidence:

The Landlord and the Tenant with the initials "R.M." agree that:

- this Tenant moved in on February 01, 2013;
- at that time rent was $600.00 per month;
- this Tenant paid a security deposit of $300.00 at the start of the tenancy;
- they did not have a written tenancy agreement; and
- the rental unit was vacated on February 03, 2019.

The Tenant with the initials "R.M." stated that on February 01, 2017 he paid an additional security deposit of $25.00. The Agent for the Landlord stated that an additional security deposit was not paid.

The Tenant with the initials "R.M." stated that on February 01, 2014 the rent was increased to $650.00. The Agent for the Landlord stated that rent was never increased to $650.00.

The Tenant submitted a Shelter Information form, dated March 03, 2017, which was completed on behalf of the Tenant with the initials "R.M.". The Tenant with the initials "R.M." stated that he completed the top portion of the form; the Landlord read the form; and the Landlord completed/signed the bottom portion of the form. This form declares, in part, that the rent is $650.00, that the tenancy began on February 01, 2017; and that the Tenant paid a security deposit of $325.00.

The Agent for the Landlord stated that:

- English is not the Landlord's first language;
- the Landlord completed/signed the bottom portion of the Shelter Information form;
- the Tenant completed the top portion of the form;
- the Landlord did not read the information provided on the form by the Tenant;
- the amount of rent written on the form is incorrect, as by this time the rent had been increased to $900.00;

- the amount of the security deposit written on the form is incorrect, as only $300.00 was paid; and
- the start date of the tenancy is incorrect, as the tenancy began in 2013.

The Tenant with the initials “R.M.” stated that on October 27, 2017 the rent was increased to $800.00. The Agent for the Landlord stated that rent was never increased to $800.00.

The Tenants contend that the Tenant with the initials “H.S.” moved into the rental unit on January 01, 2016. The Agent for the Landlord stated that the Landlord is not certain when the Tenant with the initials “H.S.” moved in, although the Landlord thought it was sometime later in 2016.

All parties agree that a written tenancy agreement was not created at any point during this tenancy.

The Tenants contend that when the Tenant with the initials “H.S.” moved in the rent was $650.00 per month, which the Tenants agreed to pay jointly. The Agent for the Landlord stated that when the Tenant with the initials “H.S.” moved in it was agreed that each Tenant would pay $450.00 per month, for a total of $900.00. The Tenant with the initials “R.M.” stated that the joint rent was not increased to $900.00 until April 01, 2018.

The Agent for the Landlord submits that when the Tenant with the initials “H.S.” moved in the Landlord the three parties entered into a new tenancy agreement.

The Tenants submitted a series of rent receipts for the period between November 01, 2016 and November 02, 2018. These receipts indicate rent was received from the the Tenant with the initials “R.M.”. All of the receipts, except the one dated November 02, 2018, indicate rent of $900.00 was paid.

The Agent for the Landlord stated that these receipts were provided to the Tenant when rent was paid. The Tenant with the initials “R.M.” stated that he did not receive receipts when rent was paid. Rather, he stated that he received all of these receipts when they were served to him as evidence for a previous dispute resolution proceedings.

Analysis:

There is a general legal principle that places the burden of proving a claim on the Applicant. In these circumstances, the burden of proof rests with the Tenants.

In the case of verbal agreements, when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can’t be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by

their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without credible evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

It is important to note that the two parties do not stand on equal ground, as one party carries the added burden of proof. In this case the Tenants have the burden of proving, during these proceedings, that the rent was increased in a manner that does not comply with the *Act*.

On the basis of the undisputed evidence I find that when the Tenant with the initials "R.M." moved into the rental unit in 2013 the rent was $600.00 per month.

I find that the Tenants have submitted insufficient evidence to establish that rent was increased to $650.00 on February 01, 2014. In reaching this conclusion I was heavily influenced by the Landlord's submission that this increase did not occur and by the absence of any financial records of such an increase, such as bank statements or rent receipts.

In adjudicating this matter I have placed little weight on the Shelter Information form submitted in evidence, as the Landlord submits that he did not read the form prior to signing it. I find this evidence credible, given that English is not the Landlord's first language.

I have placed little weight on the Shelter Information form, in large part, because some of the information the Tenant with the initials "R.M." provided on the form is incorrect. For example, this Tenant declared that the tenancy began on February 01, 2017, although the parties agree that it began many years prior to that.

I find, on the balance of probabilities, that the Tenant with the initials "R.M." paid a security deposit of $300.00 although on the form he reported that he paid a security deposit of $325.00. In determining that a security deposit of $300.00 was paid, I was heavily influenced by the undisputed evidence that this amount was paid at the start of the tenancy. I find that this Tenant's testimony that he paid an additional security deposit of $25.00 on February 01, 2017 lacks credibility. I find it lacks credibility, in part, because the Tenant could provide no reasonable explanation of why he would have paid another security deposit on the date he completed this form, which is three years after the rent was allegedly increased. I find it entirely possible that his testimony is a self-serving explanation of this discrepancy on the Shelter Information form.

As some of the information provided on the Shelter Information form is inaccurate, I cannot conclude that the rent information provided on the form is accurate. I therefore find that this form does not establish that rent was increased to $650.00 on February 01, 2014.

I find that the Tenants have submitted insufficient evidence to establish that rent was increased

to $800.00 on October 27, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate this submission. Conversely, I find that the rent receipts submitted in evidence by the Tenants, which indicate rent of $900.00 was paid for most months between November 01, 2016 and November 02, 2018 corroborate the Landlord's submission that the rent had already been increased to $900.00 by October 27, 2017.

On the basis of the undisputed evidence I find that when the Tenant the Tenant with the initials "H.S." moved into the rental unit in 2016 the Landlord and these two tenants entered into a new verbal tenancy agreement. I find that this should be considered a new verbal tenancy agreement as it granted both Tenants the right to occupy the rental unit.

I find that the Tenants have submitted insufficient evidence to establish that the rent was $650.00 when the Tenant with the initials "H.S." moved into the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that rent was $650.00 or that refutes the Landlords submission that rent was $900.00 when the second Tenant moved into the unit. I am cognizant of the Shelter Information form that was submitted in evidence however, as previously stated, I find that is of little evidentiary value.

I find that the Tenants have submitted insufficient evidence to establish that their rent was increased to $900.00 on April 01, 2018. In reaching this conclusion I was heavily influenced by the rent receipts submitted in evidence by the Tenants. These receipts indicate that rent of $900.00 was being paid, for most months, since November 01, 2016. I find that these refute the Tenants' submission that rent was increased to $900.00 in 2018.

I have relied on the rent receipts during this adjudication because I favour the Landlord's submission that the rent receipts were provided to the Tenant when rent was paid over the Tenants' submission that the receipts were not received until they were served as evidence for a previous dispute resolution proceedings. I favoured the Landlord's submission, in large part, because the receipts have inconsistencies that lead me to believe that they were issued at the time of payment. For example, the receipt from December of 2016 has a note on it that indicates the rent was "late". In addition, several of the receipts are dated for dates other than the first day of the month, which is when rent was due. I find these nuances strongly suggest that they were issued at the time of payment.

I find that the Tenants have failed to establish that the rent was increased in a manner that as not compliant with the *Act*. I therefore dismiss the Tenants' application for a rent refund.

Conclusion:

The Tenants Application for Dispute Resolution 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: June 04, 2019

Residential Tenancy Branch