



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing, and the landlord was accompanied by Legal Counsel and a person to translate. The translator is the landlord's brother, and Legal Counsel for the landlord indicated that the landlord speaks English, but it is not his first language, and his brother is able to translate when the landlord is unable to understand. The landlord's Legal Counsel also indicated that he is satisfied with the skill and ability of the translator to assist the landlord. The translator was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language, and from the landlord's Native language to the English language to the best of his skill and ability.

The tenant and the landlord each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties (or counsel) were given the opportunity to question each other and the witness, and to give submissions.

During the course of the hearing, the tenant testified that he had not received any evidentiary material from the landlord. The landlord's Legal Counsel indicated that it was sent to the tenant by registered mail, however it was determined that the landlord had sent it to an incorrect address of the tenant. The landlord's Legal Counsel applied to adjourn the hearing to give the tenant an opportunity to review the landlord's evidence, however the tenant opposed an adjournment.

On the contrary, I find that the landlord seeks an adjournment to give the landlord a further opportunity to provide evidence to the tenant at the tenant's correct address. Given that the tenant opposed an adjournment, and that the tenant was not part of any reason that he did not receive the evidence, I find that the tenant would be prejudiced and I declined to adjourn. Since the landlord has not provided any evidentiary material to the tenant, I decline to consider it.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unlawful rent increases and for improvements made to the rental property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on June 1, 2012 and ended at the end of August, 2018. Rent in the amount of \$550.00 per month was payable on the 1st day of each month at the beginning of the tenancy. A written tenancy agreement was signed a couple of years after the tenant moved in, after the tenant had asked for a part of the garage to be included. The parties agreed to a \$100.00 rent increase, and there are no rental arrears. A copy of the tenancy agreement has not been provided as evidence for this hearing.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00, which has been returned in full to the tenant.

The rental unit is the lower level of the landlord's home, and the landlord resided in the upper level during the tenancy.

The tenant further testified that the landlord increased rent in February, 2016 saying that he needed more money. The increase was verbal only, and no Notice of Rent Increase was served on the tenant. Rent was raised by \$50.00 or \$100.00 increments throughout the tenancy, and last year the tenant paid \$800.00 per month. Rent was paid in cash, but the landlord would not provide receipts stating that his eyesight was too poor. As a result, the tenant does not know how much or when such increases

became effective. The tenant made some of the receipts for the landlord to sign, but recommended that the landlord find someone to make them out, but the tenant didn't get many receipts. That also resulted in the landlord saying that the tenant didn't pay rent.

The tenant did some work on the rental home, such as new flooring, replacing a window, fixing doors, roofing repairs, and yard work, but the tenant would have a difficult time getting compensation from the landlord. Toward the end of the tenancy, the landlord hired someone to paint outside, and had the tenant return to do it for \$400.00. The landlord wanted the tenant to make more improvements without paying for more, and threatened to evict the tenant. The tenant finished painting the house, removed a satellite dish with concrete, and a friend made all the drapes for the house. Some jobs that the tenant completed were compensated by the landlord, such as garage soffits. In September, 2018 the landlord paid the tenant \$1,400.00 for return of the security deposit and \$800.00 of that was for painting the inside of the rental unit.

The tenant claims \$4,000.00 from the landlord.

The landlord testified that about 2 years after the beginning of the tenancy, in 2014, rent was increased to \$650.00 per month due to renting the garage.

The landlord agrees that he had the tenant do some work and improvements. The landlord paid in cash for some, and the tenant deducted some from rent with the landlord's consent.

The landlord gave a receipt book to the tenant, who made receipts himself. The landlord's eyesight is not good, and when the tenant paid money, the landlord had him write the receipt. At no time did the tenant complain that he wasn't paid the full amount owed to him, and the tenant did not pay any rent for the last month of the tenancy. In July, 2018 the tenant told the landlord he would be moving at the end of August. The tenant moved out on August 31, 2018 but left belongings at the rental unit until the end of September.

The landlord's witness testified that he knows the parties and was present when the tenant requested \$1,400.00 for return of the security deposit and for the work that he completed for the landlord. The witness questioned why the landlord should repay the security deposit before the tenant moved out, but the tenant said he wouldn't move out until the landlord returned the security deposit. The tenant was given \$1,400.00 in cash, and the tenant made out a receipt. He didn't ask for any more compensation, didn't say anything about rent increases and said he would be moving out.

During cross examination the witness testified that the tenant did complain about not getting justifiably compensated by the landlord.

Analysis

Firstly, it is important for the landlord to learn that a landlord may not collect more than half a month's rent for a security deposit, and if the landlord collects more than that, the tenant may reduce rent by the amount of the overpayment. In this case, the landlord has returned all of the security deposit to the tenant, and therefore, no orders need be made with respect to it.

Where a party makes a claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant testified that since the landlord didn't issue receipts for rent, the tenant has no idea when rent increases took effect. Whether the tenant actually received compensation by way of work performed by the landlord or the tenant paid rent, the tenant ought to have kept track. Although the landlord did not dispute that rent increases were contrary to the law, I find that the tenant has failed to satisfy element 3 in the test for damages.

With respect to the balance of the tenant's claim, the *Residential Tenancy Act* provides me with the authority to determine the amount of and order compensation to be paid for issues relating to a landlord and a tenant in the course of a tenancy. A landlord is required to reimburse a tenant for emergency repairs, but nothing in the *Act* provides for payment to a tenant for improvements made to a rental unit that are not emergency repairs. In this case, the tenant's position is that improvements were made by the tenant at the request of the landlord, with compensation to be given in cash or by way of reduced rent. The parties disagree on what those amounts should be, and I am not satisfied that the tenant has established that any loss exists or that any loss was a result of the landlord's failure to comply with the *Act* or the tenancy agreement.

Conclusion

For the reasons set out above, the tenant's application is hereby 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 06, 2019

Residential Tenancy Branch