Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, male landlord ("landlord") and "female landlord" (collectively "landlords"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 25 minutes.

At the outset of the hearing, I notified both parties that an employee of the Residential Tenancy Branch was observing the hearing for training purposes but would not be participating. Both parties confirmed that they had no objection and they consented to same. Accordingly, I proceeded with the hearing based on both parties' consent.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application.

The landlord stated that he emailed a copy of the landlords' written evidence package to the tenant on August 15, 2019. The tenant stated that he did not receive it. The landlord confirmed that he had the tenant's mail forwarding address, but he did not want to pay to mail the tenant's application, so he emailed it instead. I notified both parties that I could not consider the landlords' written evidence package at this hearing or in my decision because email is not permitted as a service method under section 88 of the *Act*

and the tenant did not receive the package. I also note that the landlords had the tenant's forwarding address to mail the package to him, as permitted under section 88 of the *Act*, but they did not do so because they did not want to expend the cost.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's first name, as both parties consented to this amendment.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 3, 2018 and ended on February 28, 2019. Monthly rent in the amount of $2,200.00 was payable on the first day of each month. A security deposit of $1,200.00 was paid by the tenant and the landlords returned the entire amount to the tenant. A written tenancy agreement was signed by both parties.

The tenant seeks a monetary order of $400.00 and the $100.00 application filing fee.

The tenant seeks a return of $100.00 per month for a four-month period from November 2018 to February 2019, totaling $400.00. The tenant maintained that his rent was $2,200.00 per month, as per his tenancy agreement, and he paid $2,300.00 per month from November 2018 to January 2019. He said that he paid $2,200.00 in February 2019, when he should have only paid $2,100.00, because his rent should have been $100.00 less because he completed gutter cleaning for the landlords, so they reimbursed him $100.00. The tenant stated that he overpaid rent "accidentally" for four months because he was confused in the first month of his tenancy, where he had to pay for rent and a security deposit at the same time. The tenant provided copies of his e-transfer emails from November 2018 to February 2019, to show the rent that was paid.

The landlords dispute the tenant's application. The landlord stated that the tenant paid $2,300.00 each month for his entire tenancy, except for February 2019, when he performed gutter cleaning so he received a $100.00 discount. The landlord said that the tenant paid prorated rent from $2,300.00 in October 2018, his first month of tenancy, because he moved in on October 3, 2018. The landlord explained that when the tenant first looked at the rental unit, he was concerned about the size of the yard and maintenance, as he did not have a lawnmower. The landlord maintained that the tenant was required to complete yard maintenance as per the parties' tenancy agreement and the tenant verbally agreed to pay an extra $100.00 per month for the landlords to maintain the lawn so he did not have to.

The female landlord stated that the tenant agreed to pay this additional $100.00 per month and it was unrealistic for him to state that he did so by accident, for the entire tenancy of five months, from October 2018 to February 2019. The tenant disputed this verbal agreement to pay for lawn maintenance, indicating that he would never pay $100.00 per month in the winter months, when none was required due to snow storms and other inclement weather.

Analysis

Section 43 of the *Act* regulates rent increases and states the following, in part:

> *Amount of rent increase*
>
> *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.*
>
> *(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

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 on a balance of probabilities. In this case, to prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for $400.00, without leave to reapply.

I find that the landlords did not impose a rent increase on the tenant. They did not serve a formal Notice of Rent Increase with proper notice to the tenant, nor did the parties agree to a rent increase in writing. I find that the tenant did not pay a rent increase to the landlords. I find that both parties verbally agreed for the tenant to pay an additional $100.00 extra per month, to the landlords, for lawn maintenance. I find that this was not part of rent, although the tenant paid it at the same time as his rent.

Although this was not a written agreement, I find that the parties' conduct demonstrates that this was a verbal agreement for lawn maintenance that was carried out through their actions. I do not find it believable or reasonable that the tenant "accidentally" paid this amount for a period of five months from October 2018 to February 2019 because he was confused about his first month's rent and security deposit being paid together. I note that the tenant did not apply for reimbursement of $100.00 or another prorated amount for October 2018, which the landlords confirmed he paid a prorated amount of $2,300.00. The tenant only applied for reimbursement from November 2018 to February 2019.

I find that the tenant did not file any dispute of this alleged rent increase until May 15, 2019, almost 7.5 months after he began paying it in October 2018, and 2.5 months after his tenancy ended. I find that the tenant failed to provide sufficient proof that he was under duress or forced by the landlords to pay this amount in addition to rent.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The tenant's entire application 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: August 26, 2019

Residential Tenancy Branch