



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNRT RP MNDCT FFT

Introduction

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

- dispute of a rent increase pursuant to section 41 of the *Act*;
- a monetary order for compensation for the cost of emergency repairs paid for by the tenant pursuant to section 33 of the *Act*;
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 32 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee paid for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package. The tenant confirmed that he did not submit any evidence for this hearing. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with the *Act*.

Preliminary Issue – Amendment of Tenant's Application

The landlord's legal first name was incorrectly stated on the tenant's application. Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's Application to provide the correct legal first name for the landlord.

Preliminary Issue – Unrelated Claims

The tenant's application to dispute a rent increase included unrelated claims for repairs and monetary compensation.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant's application to dispute the rent increase, and therefore these claims are dismissed and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*:

- a monetary order for compensation for the cost of emergency repairs paid for by the tenant pursuant to section 33 of the *Act*;
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 32 of the *Act*; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

Issue(s) to be Decided

Is the Notice of Rent Increase issued by the landlord in accordance with the *Act*? If not, should the Notice of Rent Increase be cancelled?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Neither party submitted a written tenancy agreement into evidence for this hearing. The parties confirmed the following terms of the tenancy agreement:

- This tenancy began on July 16, 2018 as a fixed-term tenancy scheduled to end on July 31, 2019, at which time the tenancy converted to a month-to-month tenancy.
- Monthly rent at the beginning of the tenancy was set at \$3,200.00 including utilities, and continues to be paid by the tenant at that amount, due on the first day of the month.
- The tenant paid a security deposit of \$1,600.00 and a pet damage deposit of \$200.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that in April 2019, he began negotiations with the tenant for changes to terms in the tenancy agreement, including a rent increase greater than the allowable 2.5% and an additional addendum to the tenancy agreement. In support of his testimony, the landlord referred to the documentary evidence he submitted of an email exchange with the tenant.

The Addendum included a term prohibiting the tenant from charging an electric vehicle at the rental unit.

The tenant testified that there was no restriction on charging an electric vehicle provided in the original tenancy agreement, therefore the tenant does not agree to the new terms of the tenancy agreement requested by the landlord or the increase in rent above the allowable 2.5%. The tenant testified that he filed the dispute as he felt the landlord continued to email him to try to re-negotiate an agreement and the tenant no longer wanted to discuss it with the landlord.

Both parties confirmed that the landlord has not served the tenant with a Notice of Rent Increase (RTB-7) form as required by section 42 of the *Act*, therefore, the tenant has continued to pay the current rent amount set out in his original tenancy agreement of \$3,200.00.

Analysis

Section 44(3) of the *Act* states that at the end of a fixed term tenancy agreement if the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Sections 42 and 43 of the *Act* allow a landlord to serve a tenant annually with a Notice of Rent Increase for the annual allowable amount, provided the tenant is given notice of a rent increase at least 3 months before the effective date of the increase, and the notice is in the approved form by use of form RTB-7 "Notice of Rent Increase".

Section 14 of the *Act* states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Therefore, in this case, at the end of the fixed-term tenancy on July 31, 2019, the tenancy continued as a month-to-month tenancy under the same terms and conditions, as the parties were unable to come to a mutual agreement on entering a new tenancy with new terms and conditions, including a new amount of rent.

In this matter, the landlord sought to enter a new tenancy agreement with the tenant through negotiation. However, the tenant has testified that he did not agree to changing the terms of the tenancy agreement and therefore he did not accept the rent increase proposed by the landlord.

Based on the testimony and evidence before me, on a balance of probabilities, I find that there was no agreement between the parties to increase the tenant's 2019 rent to an amount greater than the allowable limit provided by the *Act* and Regulations as the tenant objected to the additional terms set out in the Addendum.

Further, I find that the landlord has not served the tenant with a Notice of Rent Increase (RTB-7) form as required by section 42 of the *Act*. As such, I find that the tenant's rent shall continue at the current amount of \$3,200.00, which is the amount of rent under the agreed upon terms of the original tenancy agreement, until it is either amended by agreement of both parties, or the landlord issues a valid Notice of Rent Increase in accordance with the *Act*.

As the tenant was only partially successful in his application as his other unrelated claims were dismissed with leave to reapply, he is entitled to recover only half of the cost of the filing fee for this application from the landlord. In place of a monetary award, I order that the tenant withhold \$50.00 from a future rent payment on one occasion in satisfaction of recovering half of the cost of the filing fee.

Conclusion

As the landlord has failed to secure the tenant's agreement to change the terms of the tenancy agreement, including the amount of rent paid, and the landlord failed to issue a rent increase in accordance with the *Act*, the tenant's rent shall continue to be paid at the amount set out in the original tenancy agreement.

The tenant is ordered to withhold \$50.00 from a future rent payment on one occasion in satisfaction of the recovery of part of the filing fee paid for the 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: August 23, 2019

Residential Tenancy Branch