



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

The tenant applies for a monetary award claiming the landlord has imposed unlawful rent increases and that he has made significant repairs and improvement during this tenancy and should be compensated.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord wrongfully imposed any rent increase? Has tenant performed work or expended money on or around the rental unit for which he is entitled to be compensated?

Background and Evidence

The rental unit was a three bedroom home when the tenant began renting it in 1998. At that time it was owned by the respondent Mr. T.'s mother, who passed away in May 2017. Mr. T. holds the property and is the landlord as executor of her estate.

The rent was originally \$800.00 per month. The tenant says he paid a \$400.00 security deposit by paying the previous tenant \$400.00 in the presence of Mr. T. and his mother. Mr. T. denies it and there is no receipt for the payment.

According to the tenant he spent a very peaceably number of years as the tenant of Mr. T.'s late mother. He says he turned the lower level of this one hundred plus year old house into a separate suite. He moved into that suite and began renting out the upper

portion of the house. He says he had his landlord's consent to do so though he does not appear to have that consent in writing.

He declined to say what rents he has been receiving from the upper rental unit. He apparently spends his winters in Mexico. It was not clear whether he rents out the basement suite while he is away in Mexico.

The tenant paid \$800.00 monthly rent for many years, almost twenty, without increase. In early 2017 Mr. T.'s mother died. He hired Ms. S.'s law firm to handle estate matters. Ms. S. informed him that the \$800.00 per month income was well below what she assessed to be current market rent in the range of \$2500.00 per month.

It appears that Ms. S. contacted the tenant in late 2017 regarding the low rent and the tenant offered to pay \$1650.00 per month. It is not clear what became of that offer but it is agreed that in January 2018 the tenant began paying \$1500.00 per month rent. It is agreed the landlord did not serve a government Notice of Rent Increase form on the tenant.

The tenant reports that one year later the landlord raised his rent to \$1560.00. He says the landlord did not give him a Notice of Rent Increase for this rise either but the tenant reviewed the permissible rent increase amount set by the government for that year and decided that \$60.00 was within the limit so he began paying it.

The tenant says that Mr. T. raised the rent again in June by \$22.00. He's paid this increase for two months.

The landlord has sold the rental unit. The purchaser has given notice in writing to the landlord of a desire to occupy the rental unit and so the tenant has been given a two month Notice to End Tenancy effective October 31, 2019. The tenant has not applied to cancel the Notice and intends to move out at the end of this month.

The tenant testifies that over the years he has conducted a number of repairs to the rental unit including a fence repair, water leak repairs and reconstruction of steps. The landlord has paid for a new roof and a new hot water heater. The tenant did not have a complete list of items he claims compensation for, nor any receipts or correspondence regarding the alleged repairs and improvements.

In response Mr. T. says the tenant has never approached him about repairs and has never asked him for reimbursement for earlier repairs or improvements prior to his

mother's death. He says he went to the tenant telling him he needed money and the tenant agreed to pay \$1500.00.

Analysis

Security Deposit

This matter is not a direct issue in this proceeding and so I make no determination about it.

Rent Increases

I find that the January 2018 increase from \$800.00 to \$1500.00 was not a rent increase imposed by the landlord. Rather, the landlord was of a mind to sell the property because the rent was so low that the economic return was negligible. In the circumstances it was a reasonable path. The tenant had an incentive to agree to a new, higher rent. He could have insisted on the current rent being maintained at \$800.00 per month and any new owner would have to assume the tenancy agreement at that rent. But, if the property was sold, the new purchaser might want to move in, resulting in the tenant losing his very advantageous tenancy arrangement.

The January 2018 increase was not imposed by the landlord. It was agreed between the parties and so is not subject to the rent increase rules found in the *Residential Tenancy Act* (the "Act") and Regulation.

I find that the January 2019 increase from \$1500.00 to \$1560.00 cannot be challenged by the tenant. By his own evidence he conducted an inquiry into this increase and determined it was in accord with the permitted increased allowed each year of a tenancy. He made his choice then not to challenge the rent increase.

I find that the rent increase from \$1560.00 to \$1582.00 to be an unlawful rent increase. The landlord did not serve the tenant with a Notice of Rent Increase in the approved form as required by s. 42(3) of the *Act* and it had been less than a year before the previous increase. Had it been in the proper form it could only have become effective twelve months after the previous increase; that would have been January 2020.

In result, the tenant is entitled to recover the \$44.00 in rent he has paid under the new increase.

Repairs and Improvements

While the onus on the tenant to prove his claim is determined on a balance of probabilities, his claim involves interactions and allegations against a person who had passed away. As a result, clear, cogent and, where possible, corroborating evidence should be presented.

The tenant has failed to provide evidence beyond his verbal testimony about repairs or improvements long in the past. I consider it far more likely that any repairs or improvements he might have participated in or contributed to were done without thought of compensation. I consider it most likely that the tenant would have been averse to bothering his landlord about any expenses or repairs in case it might incite her to review the extraordinarily low rent he was paying over almost twenty years.

I dismiss this item of the claim.

Conclusion

The tenant is entitled to a monetary award of \$44.00. His filing fee was waived as he claimed to be living on a disability income. The tenant will have a monetary order against the landlord Mr. T. in the amount of \$44.00.

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: October 24, 2019

Residential Tenancy Branch