



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LRE, MNDCT, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to dispute a rent increase, to suspend or restrict the Landlord’s right to enter, for monetary compensation, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing as was the Landlord and the Landlord’s spouse (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant stated that she did not receive a copy of the Landlord’s evidence.

The Landlord stated that they sent a copy of their evidence to the Tenant by registered mail to the address of the rental unit. They provided a copy of the registered mail information which shows that the package was mailed on October 27, 2019. However, both parties confirmed that the tenancy ended on October 22, 2019. The Landlord stated that they mailed the package to the Tenant at the rental unit due to not having a forwarding address and as that was the Tenant’s last known address.

As stated in Section 88(c) of the *Act*, a party may be served by registered mail at an address at which they reside. As the Landlord knew the Tenant no longer resided at the rental unit, I find that they did not serve the Tenant in accordance with Section 88 and therefore find that their evidence was not served to the Tenant. I also note that there are other methods of service and the Landlord did not provide any testimony regarding alternate methods such as trying to meet up with the Tenant in person or contacting the Tenant for an address for service.

Accordingly, I find that the Landlord's evidence was not served to the Tenant as required by the *Residential Tenancy Branch Rules of Procedure* and therefore is not accepted and will not be included in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The parties were in agreement that the tenancy ended on October 22, 2019. Therefore, I find that the Tenant's claims to dispute a rent increase, to restrict or suspend the Landlord's right to enter the rental unit and for an order for the Landlord to comply are no longer relevant. The parties were notified of this at the hearing and were advised that the hearing would proceed based on the Tenant's monetary claims only, including the Tenant's request for the recovery of the filing fee.

As the tenancy has ended, the additional claims of the Tenant are dismissed, without leave to reapply.

The Tenant filed the application seeking compensation in the amount of \$1,275.00. However, she submitted a Monetary Order Worksheet which outlines a claim of \$1,775.00 which she stated included additional compensation for the time she resided in the rental unit following the submission of the application. The parties were informed that I would only be considering the initial claim of \$1,275.00 given that the Tenant did not amend the application to claim an additional amount of money.

As stated by rule 2.2 of the *Residential Tenancy Branch Rules of Procedure*, the claim is limited to what is stated on the application.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to some of the tenancy details. The tenancy began on February 15, 2019 and ended on October 22, 2019 after service of an Order of Possession. The Tenant paid a pet damage deposit of \$250.00 and a security deposit of \$1,050.00 at the start of the tenancy.

The parties were not in agreement as to the monthly rent amount which is the basis of the Tenant's monetary claim. The Tenant stated that as per the online advertisement for the rental unit the monthly rent was to be \$2,100.00 with utilities included. She stated that she met with the Landlord on January 24, 2019 and signed the tenancy agreement which stated \$2,100.00 with utilities included. The Tenant submitted a photo of the tenancy agreement which is difficult to read the details. However, she stated that there was no additional information provided on the tenancy agreement regarding utilities.

The Tenant also submitted a copy of the tenancy agreement with a statement regarding utilities added which she noted was added on later. The statement reads as follows and was initialled by both parties:

*Additional information
Plus 150.00 in utilities*

The Tenant testified that on January 27, 2019 the Landlord emailed her updated paperwork regarding the tenancy agreement. The Tenant stated that as she had already paid the pet damage deposit and had nowhere else to move, she agreed and signed the paperwork. She submitted a copy of the document which states the following:

Rent is \$2100 for Feb 15 Mar 1st Apr 1st. Plus \$150.00 in utilities. Then for May 1st rent is 2300 plus 150.00 for utilities.

The document was signed by the Landlord on January 27, 2019 and by the Tenant on January 30, 2019. The document also states at the bottom:

As agreed upon before the tenancy.

The Tenant has applied for compensation in the amount of \$1,275.00 which she stated was due to an overpayment of rent over and above the \$2,100.00 agreed upon and for the return of the \$150.00 paid for utilities each month. The Tenant submitted a Monetary Order Worksheet outlining the amounts she overpaid each month. She also submitted banking information showing e-transfer payments made throughout the tenancy.

The Landlord testified that they did not increase the rent, but instead that they had provided an initial rent reduction to the Tenant at the start of the tenancy to help her out. As such, they stated that the Tenant was aware that rent would initially be \$2,100.00 and then would be \$2,300.00 beginning in May 2019. They stated that they had email communication with the Tenant about this and that the Tenant had agreed.

The Landlord stated that the tenancy agreement signed in January 2019 indicated a monthly rent of \$2,100.00 and that a statement was added at the same time to specify that utilities would be \$150.00 per month. They noted that this statement was initialled by both parties.

The Tenant did not dispute that this statement was on the tenancy agreement but stated that it was added following the initial signing of the tenancy agreement and was signed around January 30, 2019. The Landlord stated that the tenancy agreement and the additional statement regarding utilities were signed at the same time and that the Tenant took photos of the agreement prior to the parties initialling the statement regarding utilities.

The Tenant provided a written submission into evidence in which she outlines the timeline of events during the tenancy. Included in the written submission, the Tenant writes that she responded to the online ad and viewed the rental unit on January 21, 2019. She stated that she received an email from the Landlord on January 22, 2019 that the unit would actually need to be rented for \$2,300.00 per month and that the Tenant agreed as she was desperate. The Tenant writes that the rent was increased more than the allowable legal amount and that utilities were supposed to be included as per the online advertisement.

The Tenant submitted into evidence a copy of the online advertisement as well as the email from the Landlord dated January 22, 2019. In the email the Landlord writes that they had miscalculated and would need to rent the unit at \$2,300.00 but are willing to rent for 3 months at \$2,100.00 given that this is what the Tenant was expecting.

Analysis

While I have considered all accepted evidence, some of the Tenant's evidence was related to the additional claims that were dismissed due to the tenancy ending. Therefore, I found that evidence to not be relevant to the monetary claims of the Tenant. The relevant evidence regarding the monetary claims was considered as part of this decision, as well as the relevant testimony of both parties.

The Tenant applied for compensation in the amount of \$1,275.00 which she stated was an overpayment of rent due to an illegal rent increase plus the return of utilities paid during the tenancy when the Tenant stated that utilities were supposed to be included.

Regarding the claims of an illegal rent increase, I refer to Section 42 of the *Act* which outlines the process for increasing the rent including that rent cannot be increased for at least 12 months. Section 43 of the *Act* provides restrictions on the amount of a rent increase in accordance with the regulations.

However, in this matter I do not find that the rent was increased illegally. Instead, I find that the evidence before me supports the Landlord's testimony that the rent was to be \$2,300.00 and the Tenant was provided three months at \$2,100.00. I also note that Section 43(1)(c) states that a landlord may increase rent as agreed to by the tenant in writing.

The Tenant submitted an email that was sent to her from the Landlord on January 22, 2019 which was prior to the tenancy agreement being signed and prior to the start of the tenancy. In this email, the Landlord outlines that rent will be \$2,300.00 but they will allow the Tenant to pay \$2,100.00 for the first three months due to that being the advertised amount.

As this email was sent prior to the tenancy agreement being signed, I find that the Tenant was aware that this was the arrangement and went ahead with signing the tenancy agreement with this understanding. I also find that the document submitted by the Tenant which was signed by the Landlord on January 27, 2019 and by the Tenant on January 30, 2019 confirms that rent will be \$2,300.00 as of May 2019.

While the Tenant testified as to signing this document under duress due to desperation for a place to live, I find that it was signed and agreed upon and the Tenant chose to move into the rental unit following this signed agreement.

Therefore, I do not find that the Tenant was issued an illegal rent increase. Instead, I find that she was aware of the conditions upon which she was entering into a tenancy agreement, including that rent was to be \$2,300.00 beginning in May 2019. I also note that as shown in the Tenant's evidence she paid this amount beginning in May 2019 instead of applying for dispute resolution right away to argue that rent should have been \$2,100.00.

Regarding the utilities, I find the relevant information to be what the parties agreed upon through the signing of the tenancy agreement, not what was stated in the online advertisement. Although the parties did not agree as to what date the statement on the tenancy agreement was initialled by both parties agreeing to monthly utilities in the amount of \$150.00, the Landlord stated it was at the time of signing the tenancy agreement on January 24, 2019 while the Tenant stated it was later on January 30, 2019. Regardless of the exact date this statement was added and initialled, I find that both dates were prior to the start of the tenancy and therefore agreed upon by both parties. As such, I do find that the Tenant was required to pay \$150.00 per month in utilities as agreed upon on the tenancy agreement.

I also note that in the written submissions from the Tenant, it seems that part of her position is that the online advertisement stated that utilities were included. However, I do not find the information in the online advertisement to be terms of the tenancy as agreed upon by both parties. Instead, I find evidence before me that the parties came to a written agreement following the Tenant viewing the rental unit and reached the agreement for utilities to be \$150.00 per month, as noted on the tenancy agreement.

Therefore, I am not satisfied that the Tenant has met the burden of proof to establish that she is entitled to the return of money paid towards rent and/or utilities. Instead I find that the Tenant was to pay \$2,300.00 per month beginning in May 2019 and that utilities were to be \$150.00 per month.

As the Tenant was not successful with the application, I also decline to award the recovery of the filing fee. The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Conclusion

The 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: November 13, 2019

Residential Tenancy Branch