



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied to dispute an additional rent increase and for monetary compensation from the landlord.

The tenant, his advocate, the landlord, his spouse and legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a rent increase and to an order for monetary compensation from the landlord?

Background and Evidence

Both parties concede that there is no written tenancy agreement and neither party could provide a definite date when the tenancy began. The tenant provided a date of July 2010 and the landlord provided a date of May 1, 2010, as to the start date of the tenancy.

The landlord's legal counsel said she had a partial copy of a tenancy agreement; however, that partial copy was not provided into evidence.

The tenant through his advocate said although his original monthly rent was \$530.00, the confirmed monthly rent by July 2010, was \$650.00.

In addition to disputing a rent increase, the tenant has filed a monetary claim, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent increase, Apr 1, '14 -Feb 28, '18	\$4,700.00
2. Rent increase, Mar 1, '18-Dec 31 '19	\$4,400.00
3. Cable difference	\$7,452.00
TOTAL	\$16,552.00

Rent increases-

In support of his application, the tenant submitted on April 1, 2014, the landlord increased his monthly rent from \$650.00 to \$750.00, in violation of the allowable rent increase under the Act. Then again beginning on March 1, 2018, the landlord increased the tenant's monthly rent by \$100.00, making it \$850.00.

The tenant claims the amount of the overpayments of the original monthly rent of \$650.00.

The tenant submitted that he never received any notices of a rent increase.

Landlord's response-

The landlord, through his legal counsel, submitted the communications between the landlord and tenant have always been verbal due to the elderly age of both. The landlord's legal counsel also submitted that the two parties agreed to a verbal tenancy agreement and to paying rent without a receipt.

The landlord submitted the tenant during the tenancy approached him about signing a document which would increase the tenant's rent subsidy, although the landlord continued to collect \$650.00 for monthly rent. The landlord submitted that a few months later, they determined that signing that document was illegal and the parties agreed to the rent being \$750.00.

The landlord submitted that they did not breach the Act as all rent increases have been voluntarily paid by the tenant so that his rent subsidy would be increased.

Cable difference-

In support of his application, the tenant submitted that he was paying \$210.00 to the landlord for cable, but in July 2019, the tenant purchased his own cable service, for \$141.00. The tenant submits that he is entitled to the difference in the cable bill he was paying to the landlord versus the amount of the cable bill he is now paying.

Landlord's response-

The landlord submitted the cable bill was not part of the tenancy agreement and that the tenant paid his bill to the landlord's son, not the landlord. The landlord's legal counsel said that her parents do not watch cable television.

Analysis

After careful consideration of the foregoing, documentary and oral evidence, and on a balance of probabilities I find as follows:

In a claim for damage, loss or compensation under the Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Rent increases-

Sections 41, 42, and 43 of the Act stipulate how and when a landlord may increase the rent as listed below.

41 A landlord must not increase rent except in accordance with this Part.

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

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.

In this case, the evidence shows that the tenant's monthly rent was increased by \$100.00 on April 1, 2014, and then again by another \$100.00 on March 1, 2018. I

accept that these increases were over the allowed amount, which in 2014, was 2.2% and in 2018 was 4.0%

Rather than file an application to dispute this rent increase at or near the first instance on April 1, 2014, the tenant continued to pay the rent increases, allowing his eventual claim to build and grow. I find that the inaction of the tenant shows that he failed to do whatever is reasonable to minimize his loss, his obligation under section 7(2) of the Act.

Additionally, in this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In other words, in this case, the tenant established a pattern of paying the rent increase for 5 and ½ years. I find the evidence on a balance of probabilities shows that the tenant consented to the rent increase to be the proper amount and that he agreed his monthly rent beginning on April 1, 2014 to be \$750.00 and beginning March 1, 2018, his monthly rent would be \$850.00. I find the tenant may not now try to strictly enforce his rights under the Act for the past rent increases.

Due to the above, I determine by the tenant's actions and conduct, that as he accepted the amount of the rent increases by paying them since April 1, 2014, that he may not now rely on the statutory allowed amount or for reimbursement of an alleged overpayment.

For these reasons, I dismiss the tenant's monetary claim for overpayment of a rent increase.

Going forward, I caution the landlord that he may not in the future increase the tenant's monthly rent in excess of the allowed amount, which for 2020 is in the amount 2.6% of \$850.00, and that the notice be on the proper form.

I caution the landlord that his obligation under the Act is to provide the tenant with a receipt for rent paid in cash.

Cable difference-

I find that the evidence shows that the tenant chose to pay the cable bill as presented to him. I also find no evidence that the cable bill was included as part of the tenancy agreement.

I find I have no authority under the Act to hold a party, the landlord in this case, to be responsible for the choices of another party, the tenant in this case.

I therefore dismiss the tenant's claim for the cable difference.

Conclusion

For the reasons stated above, the tenant's 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: December 18, 2019

Residential Tenancy Branch