



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to dispute a rent increase and for monetary compensation.

One Tenant was present for the hearing along with an advocate (the “Tenant”) who presented testimony on behalf of the Tenants. The Landlord was also present for the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord stated that initially he only received the Tenants’ evidence and not the notice of hearing documents, which he later received after contacting the advocate for the Tenants. The Tenant confirmed that there were issues with the mailing address of the initial package which caused a delay in sending the hearing documents to the Landlord. The parties were provided the opportunity to adjourn the hearing. However, the Landlord confirmed that he would like to continue with the hearing as scheduled and that he did not have any documentary evidence that he wished to submit. As such, the hearing continued as scheduled.

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 Tenants applied to dispute a rent increase as well as for monetary compensation. However, at the hearing it was confirmed that the Tenants were not disputing a current rent increase notice, but instead that they were seeking compensation relating in part to illegal rent increases issued in the past. Therefore, as there is not currently a rent increase in dispute, the application was amended to remove this claim. This decision will address the monetary claims of the Tenants. This amendment to the application was made pursuant to Section 64(3)(c) of the *Act*.

Issue to be Decided

Are the Tenants entitled to monetary compensation?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on July 1, 2013 with a previous landlord and the Tenants paid a security deposit of \$490.00 at this time. This tenancy agreement was submitted into evidence which indicated a monthly rent of \$780.00. The parties agreed that despite some previous rent increases which are the subject of this dispute, the monthly rent is currently set at \$780.00.

The Tenant referenced a previous dispute resolution decision dated October 4, 2019 in which the following finding was made regarding the monthly rent:

As a result of the foregoing I find that the rent payable by the Tenants is \$780.00 per month. I further find that as the Landlord has not issued a valid rent increase, he is at liberty to do so at any time, provided that the Notice complies with Part 3 of the Act and Part 4 of the Regulations.

The parties both agreed that based on this previous decision, the current rent amount due each month is \$780.00.

The Landlord testified that his spouse purchased the property in July 2015 with the tenancy already in place, and that he became the owner of the property in December 2018.

The Tenants have applied for compensation in the amount of \$6,400.00 which includes an overpayment of rent for the period of September 1, 2015 and August 31, 2016 in the

amount of \$840.00, an overpayment of rent for the period of September 1, 2016 to October 31, 2019 in the amount of \$4,560.00, as well as \$1,000.00 for loss and damages.

The Tenant's advocate and the Tenant provided the following testimony regarding the Tenants' claims:

When the house sold in June 2015, the new Landlord asked the Tenants to increase rent from \$780.00 to \$850.00 per month and threatened eviction if the Tenants did not agree. This was not done through a notice of rent increase form, but instead through verbal means only. Beginning in September 2015 the Tenants paid \$850.00 per month.

However, the Tenant noted some confusion with the rent amount they were supposed to pay and therefore stated that there were times when the Tenant paid \$390.00 (for half of the monthly rent) as they were not sure what they should do. They noted that the other Tenant's rent is paid through the Public Guardian and Trustee and therefore they were sometimes unaware of what the Public Guardian had been advised to pay versus what the other Tenant was paying.

The Tenant stated that on August 5, 2016 they received a notice of rent increase which was on the approved form but was above the allowable amount of rent increase. A copy of the notice of rent increase form was submitted into evidence and stated that the rent would increase from \$850.00 to \$950.00, set to begin on November 5, 2016.

The Tenant stated that they disputed the rent increase which was successful, and the rent went back to \$850.00. The Tenant testified that on August 3, 2016 the Landlord called the Public Guardian to increase their payment to \$475.00, while the other Tenant continued to pay \$425.00 as she was unaware of any increased rent amount. This meant that \$900.00 was being paid monthly despite the Tenants' belief that rent was to be \$850.00 at that time.

The Tenant referenced an email submitted into evidence between the Tenant's advocate and the Public Guardian in which the case manager confirms that as of September 1, 2016 the rent for one of the Tenants was increased from \$425.00 to \$475.00.

The Tenant has claimed \$840.00 which is 12 months overpayment at \$70.00 per month (paying \$850.00 instead of \$780.00), and \$4,560.00 for 38 months of overpayment at \$120.00 per month (paying \$900.00 instead of \$780.00). The Tenant submitted bank

statements into evidence which show rent payment made by one of the Tenants from June 2015 to January 2016, as well as from January 2019 and May 2019. It is noted on the bank statements that since a previous dispute resolution proceeding in May 2019, there was confusion as to how much rent to pay.

The Landlord testified that in 2015 when his spouse purchased the rental unit that a tenancy agreement was signed with the Tenants and therefore that the rent increase amount was agreed upon. He stated that although the legal allowable increase amount may not have been known, the parties agreed on the new rent amount and also noted that the Public Guardian never disputed the rent increase amount.

The Landlord stated that he became owner of the home in December 2018 and became the Landlord at that time. He stated that at this time the Tenants were asked to increase rent to \$1,000.00 and despite the Tenant's denial about this, the parties signed a new tenancy agreement.

Although the Landlord argued that the Tenants agreed to all of the rent increases, he agreed that the Tenants overpaid \$120.00 for one year and therefore offered to return \$1,440.00 to the Tenants as a settlement agreement. The Tenant declined this offer and a settlement was not reached.

The Tenant has also claimed \$1,000.00 for loss and damages including loss of quiet enjoyment, harassment and aggravated damages. The Tenant testified that they have received eviction notices which have been stressful, as well as the stress that has resulted from the Landlord bullying the Tenants. They stated that the Landlord was warned about entering the rental unit without proper notice but continues to provide insufficient notice. They stated that this occurs regularly given that the rental unit is currently listed for sale. The Tenant also noted that they are experiencing intimidation due to the Landlord constantly threatening eviction.

The Tenant referenced a rodent issue in the rental unit and stated that the Landlord has put the onus on the Tenants to deal with the rodents, including paying out of their own pocket for pest control. The Tenant stated that she feels bullied and intimidated, thus the claim for loss and damages. A letter dated November 26, 2019 was submitted into evidence. The letter was from the Tenant's advocate to the Landlord outlining the issues with rodents in the rental unit and requesting that the Tenant be repaid for the cost of pest control.

The Tenants submitted into evidence a letter from the Tenants' advocate to the landlord dated June 3, 2019 in which the advocate writes that the Landlord was threatening to enter the Tenants' home and remove the Tenant and her belongings by May 31, 2019. The Tenants also submitted a previous dispute resolution proceeding decision dated May 17, 2019 in which a One Month Notice to End Tenancy for Cause (the "One Month Notice") was upheld, a review consideration decision dated May 28, 2019 in which a new hearing was granted, and a review hearing decision dated July 10, 2019 in which the One Month Notice was cancelled.

The Landlord stated that he has never disrespected the Tenants. He stated that he always provides notice to enter the rental unit to the Tenants in person, except for one time when the notice was posted on the Tenants' door 3 days in advance of needing to enter. The Landlord further stated that he has never threatened to end the tenancy and that the Tenants had signed and agreed to the rent increases.

Regarding notice to enter the rental unit, the parties reached a settlement which will be outlined below.

Settlement Agreement

As stated in Section 63 of the *Act*, parties may be offered the opportunity to settle a dispute and for an agreement reached to be recorded in the form of a decision and/or order. Through discussions during the hearing the parties reached the following settlement:

1. The rental unit will be shown for the purposes of the sale of the property on Sundays from 2-4 pm.
2. The parties agree that the Landlord does not need to serve notice to enter on Sundays from 2-4 pm as this settlement is the parties' agreement for entry on that day and time.
3. This agreement remains in place until February 29, 2020 unless the house sells before that time.
4. Should the house not be sold by February 29, 2020, the parties will enter into a discussion to revisit this agreement.

The parties both confirmed that they were entering into the settlement agreement voluntarily and of their own free will. They both also confirmed their understanding that a settlement agreement is final and binding.

Analysis

Regarding the Tenants' application for compensation for overpayment of rent due to illegal rent increases, I make the following findings:

I accept the evidence before me that shows that through a dispute resolution decision issued on October 4, 2019, the monthly rent was confirmed at \$780.00, which was also agreed to by both parties at the hearing.

The Tenants applied for compensation for overpayment in the amount of \$840.00 for the period of September 1, 2015 to August 31, 2016. Although the Landlord stated that there was a new tenancy agreement signed for this period with a new monthly rent amount as agreed upon by both parties, I do not have evidence of this tenancy agreement before me. Only the original tenancy agreement was submitted into evidence with monthly rent set at \$780.00. Therefore, I accept the Tenants' testimony that they did not agree in writing to a rent increase.

I also accept the evidence before me that shows that the rent was increased \$100.00 as of November 2016 and although the proper form was used, this was well beyond the legal amount allowable at the time. Therefore, I find that the Landlord was in breach of the *Act* as the notice of rent increase did not comply with Section 41 of the *Act*. As stated in Section 7 of the *Act*, if a party is in breach of the *Act*, they must compensate the other party for any losses that occur as a result.

However, as stated in *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss*, a party claiming a loss must also establish the value of their loss.

In this matter, I am not satisfied that the Tenants established the amount that was overpaid. The Tenant submitted into evidence some bank statement information that shows funds transfer and/or withdrawal for some months of 2015 and 2019, as well as January 2016. However, I find insufficient evidence to establish the payments made between February 2016 and 2018, which is a significant portion of the amount claimed.

I also note that the evidence provided shows payments of half the amount of rent, given that the two Tenants pay the rent separately, with the other half of the rent paid by the Public Guardian. From the Tenants' email evidence submitted from the Public Guardian, it seems that beginning in September 2016 the rent payment made from the Public Guardian was \$475.00 per month. However, there is no confirmation as to how much

was paid from the Public Guardian or from the other Tenant prior to September 2016 or the amount that is currently being paid.

From the evidence before me, I find that both Tenants are on one tenancy agreement and therefore the monthly amount due for rent is the full amount, regardless of how much each party individually pays.

At the hearing the Tenant also provided testimony that there was confusion regarding how much rent to pay at various times and therefore that the amount requested by the Landlord following the illegal rent increases was not always paid. For example, the Tenants have claimed that they overpaid \$70.00 per month beginning in September 2015 and submitted a bank statement showing a cash withdrawal of \$425.00 for half of September 2015 rent.

However, a transfer noted on the bank statements as October 2015 rent shows an amount of \$390.00, which if both Tenants were paying equal amounts, would mean that \$780.00 was paid that month, not \$850.00 as claimed. I also note that there is insufficient evidence regarding how much total rent was paid for those months, which makes it difficult to establish an overpayment amount for the full monthly rent. In the absence of sufficient evidence to establish what the full rent amount paid for each month claimed, I am not satisfied as to the value of the Tenants' loss.

Therefore, although I find that the Tenants established that the Landlord issued illegal rent increases, I am not satisfied that the Tenants have established the exact amounts that they overpaid for rent during the periods claimed.

However, although the Landlord denied that the rent increases were illegal as the Tenants agreed in writing, the Landlord did offer during the hearing to return an amount of \$120.00 per month for one year. Although the Tenant did not accept this offer, I find this to be the Landlord's acceptance of the amount overpaid by the Tenants during this time period. In the absence of sufficient evidence that would allow me to establish the exact amount overpaid, I accept this as evidence of the amount overpaid for a period of one year.

Therefore, I find that the parties were in agreement as to 12 months of rent overpayment at \$120.00 per month for a total of \$1,440.00. As stated, I decline to award further compensation for rent overpayment as I am not satisfied as to the exact amount owed for the total rent paid by both Tenants. Accordingly, I award the Tenants \$1,440.00 as compensation for overpayment of rent due to illegal rent increases.

Regarding the Tenants' claim for harassment, loss of quiet enjoyment and aggravated damages, I decline to award any compensation as claimed. The parties were not in agreement as to whether the Landlord is providing inadequate notice to enter, intimidating or harassing the Tenants or interfering with their right to quiet enjoyment.

As stated by rule 6.6 of the *Residential Tenancy Branch*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, the Tenants have the burden of proof. As the parties presented conflicting testimony on the claims of harassment and other loss, it is up to the Tenants to submit sufficient evidence over and above their testimony to support their claim. In this matter, I do not find sufficient evidence from the Tenants to establish that they are experiencing a loss of quiet enjoyment, harassment or other loss due to the actions of the Landlord.

While I do find evidence before me that the Tenants were served with a notice to end the tenancy which was later cancelled through a dispute resolution proceeding, I find that the Landlord has a right under the *Act* to issue a notice to end tenancy just as the Tenants have a right to dispute the notice. However, in the absence of more information regarding threats of eviction, illegal notice to enter the rental unit, or other such evidence I am not satisfied that the Tenants have met the burden of proof regarding these claims such that they are entitled to compensation.

Therefore, I award the Tenants an amount of \$1,440.00 for overpayment of rent. The remainder of the Tenants' application is dismissed, without leave to reapply.

Conclusion

Pursuant to Section 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,440.00** as outlined above. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The parties are ordered to follow the terms of the settlement agreement outlined above.

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