



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 6, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application and amendment packages in September of 2019. The Landlord did not take issue with the service of either of these packages. However, the Tenant sent a 3rd package to the Landlord, by registered mail, on December 23, 2019. Proof of service was provided. This 3rd package contained the Tenant's evidence. The Landlord stated that this package was served late, and it was difficult to go through before the hearing. As stated in the hearing, this package is late and I find it is not admissible, as it has not been served in accordance with the Rules of Procedure.

Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the evidence is late and the Landlord did not have sufficient time to read and respond to it, I will not consider the Tenant's late documentary evidence in this hearing. The Tenant relied on oral testimony only in the proceeding.

The Tenant confirmed that he received the Landlord's evidence package (sent by Registered Mail on December 17, 2019) and did not take issue with the service of this package. I find the Landlord sufficiently served the Tenant with his evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant is looking for 12 months' rent in compensation, pursuant to section 51 of the Act. However, during the hearing, it was explained that 12 months' rent in compensation is only payable in situations where the Tenant receives the 2-Month Notice to End Tenancy for Landlord's Use (the Notice) on or after May 17, 2018. In this case, the Tenant received the Notice in April of 2017, and the maximum compensation under this portion of the Act is equivalent to 2 months' worth of rent, as per the legislation at that time. The Tenant's application is amended to reflect this reduced amount (2 x \$1,260.00).

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,260.00 per month at the end of his tenancy and rent was due on the first of the month. The Tenant stated he had lived there several years and moved out on August 31, 2017.

The Tenant is looking for 12 months' rent in compensation. However, during the hearing, it was explained that 12 months' rent in compensation is only payable in situations where the Tenant receives the Notice on or after May 17, 2018. The Tenant is seeking this amount because he stated that the Landlord failed to perform the stated purpose on the Notice.

The Landlord provided a copy of the Notice into evidence. The Landlord selected the ground that he or a close family member was going to move into the rental unit. The Tenant acknowledges receiving the Notice in April of 2017. Subsequent to this, the parties acknowledge that they had some conversations and negotiations. The Landlord provided into evidence a copy of a mutual agreement to end tenancy which both parties acknowledge signing on July 21, 2017. The agreement specifies that the parties agreed to “set aside” the Notice issued in April, and the chose a different (later) date to end the tenancy. The parties also agreed to a different smaller amount of compensation that the Landlord would pay the Tenant as part of the mutual agreement.

The Tenant feels that because the Landlord took a few months to renovate the rental unit, prior to moving in, that he should be entitled to compensation, since the Notice was issued so that the Landlord could move in. The Landlord pointed to the mutual agreement to show that another agreement was made, and that the Notice was mutually agreed to be set aside.

The Tenant is also seeking to recover rent overpayments. The Tenant explained that for many years, the Landlord only gave him verbal and informal rent increases. The Tenant stated that this means the rent increases were not done on the appropriate forms, and are therefor invalid. The Tenant stated he would like to get this money back. The Tenant did not speak to any of the amounts he overpaid in the hearing, and he did not explain how he arrived at the amount he claimed on his amendment.

The Landlord stated that the rent increases were always given with mutual consent, and although some were verbal, the Tenant always agreed with him. The Landlord stated that he always kept the increases very low and only once was it slightly over the allowable amount. The Landlord does not feel it is fair to allow the Tenant to agree verbally, pay the amounts over the years, and then try to get the money back.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this case, the Tenant is seeking compensation, pursuant to section 51 of the Act, (2 x \$1,260.00) because the Landlord did not utilize the unit as he said he would in the Notice. The Tenant is also seeking to recover rent he paid due to improper rent increases over several years.

With respect to the first item, I find it important to note that although a Notice was issued in April of 2017, there is documentary evidence from the Landlord to show that both parties agreed, after the Notice was issued, to set aside the Notice and to end the tenancy at a different date, with different compensation and different terms.

Based on the agreement provided into evidence, I find the Notice issued in April of 2017 is of no force or effect, as the parties agreed in writing to set it aside. I find the tenancy ended by way of this secondary mutual agreement, and not by way of the Notice. Since the Notice is of no force or effect, I find the Tenant is not entitled to compensation under section 51 of the Act. I dismiss this portion of the Tenant's application, in full, without leave.

With respect to the second item the Tenant is seeking, I find he has failed to sufficiently demonstrate what he is owed. The Tenant has no admissible documentary evidence. There is no admissible monetary order worksheet itemizing what rent was paid, and when, and what rent increases were over the years.

I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- ***a detailed calculation of any monetary claim being made;***
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

I note the Tenant's claim is for a substantial amount of money, and many different items, over many years. I find it is prejudicial to the respondent to not have a monetary

order worksheet that has been properly provided into evidence in a timely manner, such that the Landlord could have sufficient time to read and respond to the claim. Since the Tenant did not submit the required documents within the proper timeframe, I dismiss this portion of the Tenant's claim without leave to reapply. I note the Tenant had many months to organize his claim, and he did not present any compelling reason as to why it took so long for him to provide his evidence to the Landlord.

As the Tenant was unsuccessful with his application, I decline to grant the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, 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: January 06, 2020

Residential Tenancy Branch