



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDT, DRI, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money loss or other money owed, to dispute a rent increase that was over the allowable amount and to recover the cost of the filing fee.

The tenant attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 23, 2019, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

The tenant appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to cancel a notice of rent increase?

Background and Evidence

The tenancy began in 2001. Current rent in the amount of \$1,750.00 was payable on the first of each month. The tenancy ended on June 28, 2018.

The tenant claims as follows:

| | | |
|----|---------------------------------------|--------------------|
| a. | Compensation equal to 12 months' rent | \$21,000.00 |
| b. | Moving costs | \$ 7,599.00 |
| c. | Recover rent increase | \$ 1,650.00 |
| d. | Filing fee | \$ 100.00 |
| | Total claimed | \$30,349.00 |

Compensation equal to 12 months' rent

The tenant testified that they did not receive a notice to end tenancy; however, they received verbal notice from the landlords that they needed to move. The tenant stated that the landlord told them that they were going to either sale the property or move-in to the premise. The tenant stated the landlord did not do either and re-rented the premise.

Moving costs

The tenant testified that they incurred moving costs and these costs would have not been incurred, as there was no reason why they had to move. The tenant stated the landlord only wanted them to move to be able to get a higher rent.

Recover rent increase

The tenant testified that rent had originally started at \$1,350.00 and was increased during the tenancy. The tenant stated that rent was at \$1,600.00 and in the summer of 2017 the landlord came to them asking to increase the rent. The tenant stated that they asked the landlords how much they wanted, which was the amount of \$150.00. The

tenant stated that they paid that increase from September 2017 to when the tenancy ended at the end of June 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Compensation equal to 12 months' rent

Tenant's compensation: section 49 notice

51 (1) of the Act states, **A tenant who receives a notice to end a tenancy under section 49** *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

And in addition,

51(2) of the Act states, an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Although I accept the tenant's evidence that they vacated on June 28, 2018; however, the evidence provided by the tenant was they did not receive a notice to end tenancy pursuant to section 49 of the Act. If a notice to end tenancy was not received under section 49 of the Act, a tenant is not entitled to compensation.

Further, the tenant indicates in their application that they received verbal notice on November 15, 2016; however, that is not consistent with a Two Month Notice to End the Tenancy for Landlord's Use of Property, as the tenancy did not end until June 28, 2018, nearly 19 months later.

I also note in the tenant's written submission that they stated they found new accommodations effective July 1, 2018 and asked the landlord if they wanted notice. Again, this is not consistent with receiving a notice to end tenancy.

Furthermore, Section 51(2) of the Act, came in to effect on May 17, 2018, I find if any notice to end the tenancy had been issued, it would have been issued prior to May 17, 2018, to have an effective date of June 28, 2018. I find the tenant would not have been entitled to claim 12 months compensation, in any event.

As the tenant did not receive a notice to end the tenancy, I find the tenant has failed to prove a violation of the Act by the landlords. Therefore, I dismiss this portion of the tenant's claim.

Moving costs

The tenant is claiming moving costs. I find the tenant is not entitled to moving cost as the tenant has failed to prove a violation of the Act. Further, even if I had found the landlord violated the Act, which I did not, the only compensation the tenant would have been entitled to would have been compensation under the notice, if one had been received. Therefore, I dismiss this portion of the tenant's claim.

Recover rent increase

In this case, the landlord asked the tenant if they would pay a rent increase. The evidence of the tenant was that they asked the landlord how much they wanted. The

tenant stated that the landlord request an additional amount of \$150.00. The tenant agreed and started to pay the additional amount of \$150.00 on September 1, 2017 and continued to pay that amount until the tenancy ended on June 28, 2018.

While I accept the rent increase was not done in writing, I find the tenants actions of asking the landlord how much they wanted as an increase, and then paying that amount for 10 months, supports that this was done by agreement.

I find the landlord had the right to rely upon the actions of the tenant that this was an agreed upon rent increase. Therefore, I dismiss this portion of the tenant's application.

Conclusion

The tenant's application is dismissed. As the tenant was not successful with any portion of their Application, I decline to award the recovery of the filing fee.

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: March 06, 2020

Residential Tenancy Branch