



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC DRI FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on November 2, 2019 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order with respect to a disputed rent increase; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that Landlord was served with the Notice of Dispute Resolution Hearing package by registered mail. The Landlord acknowledged receipt. Further, the Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order respecting a disputed rent increase?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed that the original fixed-term tenancy began on October 1, 2017 and was expected to continue to September 30, 2018. S.C., the Tenant's girlfriend at the time, was also named in the tenancy agreement. During the fixed term, rent in the amount of \$1,700.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$850.00.

On April 30, 2018, S.C. asked via email if the Landlord would be willing to allow them to break the agreement. A copy of the email submitted into evidence by the Landlord states: "I am very sorry but I need to know if there's anyway [the Tenant] and I can break our lease early.. We have split up and can no longer live together.. I can't afford this place on my own and he is moving else where." The Landlord testified he accepted the request. Although S.C. moved out, the Tenant continued to reside in the rental unit and pay rent in the amount of \$1,700.00 per month.

Subsequently, the Tenant and the Landlord entered into a new fixed-term tenancy agreement for the period from October 1, 2018 to September 30, 2019. A copy of the new tenancy agreement was submitted into evidence. The new fixed-term agreement stipulated rent in the amount of \$1,850.00 per month. The security deposit did not increase.

The parties agreed the Tenant paid \$1,850.00 per month from October 1, 2019 to January 31, 2020, and \$1,898.10 per month from February 1, 2020 to present

The Tenant requests a monetary order for an overpayment in rent from October 1, 2018 to present. He testified that although he signed the tenancy agreement that commenced on October 1, 2018, the increase was greater than the amount allowed under the regulations and was therefore ineffective. The Tenant also asserted that the increase that took effect on February 1, 2020 is void because the previous increase did not comply with the regulations.

Although the total amount of the claim was broken down in calculations submitted by the Tenant, the evidence indicates the Tenant's claim from October 1, 2018 to present is as follows:

Period	Monthly overpayment	Number of months	Total overpayment
Oct 1/18-Sep 30/19	\$150.00	12	\$1,800.00
Oct 1/19-Jan 31/20	\$150.00	4	\$600.00
Feb 1/20-Mar 31/20	\$198.10	2	\$396.20
TOTAL:			\$2,796.20

In reply, the Landlord testified that on April 30, 2018, S.C. asked to end the tenancy because she and the Tenant were separating. The Landlord testified that he accepted the notice and the unit was listed for rent on May 1, 2018. Seven days later, the Landlord's agent advised via email that an application had been received. A copy of the email was submitted into evidence. However, the Landlord testified the Tenant expressed an interest in renting the unit on his own. Through his property manager the Landlord advised the Tenant that he could remain in the unit at the same rent until October 1, 2018. The Tenant continued to live in the unit.

The Landlord testified that on August 27, 2018, his property manager informed him that the Tenant and S.C. were together again and had applied to rent another property. This information was received through a colleague of the property manager. A copy of the email was submitted into evidence. As a result, the Landlord again listed the unit for rent on September 1, 2018. However, as noted above, the Tenant entered into a new fixed term tenancy agreement effective October 1, 2018.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

I find that the parties entered into a fixed-term tenancy agreement that commenced on October 1, 2017 and was expected to continue to September 30, 2018. However, on April 30, 2018, the Tenant's girlfriend asked if the Landlord would be willing to allow them to break the lease. The Landlord accepted the request and S.C. moved out. As a result, I find that the original fixed-term tenancy ended by agreement, and that the Landlord and Tenant entered into a new, unwritten fixed-term tenancy agreement that would end on October 1, 2018. Further, as described above, I find that the parties entered into a further fixed-term tenancy agreement that began on October 1, 2018 and

ended on September 30, 2019. Since that time, the tenancy has continued on a month-to-month basis.

With respect to the Tenant's claim, Part 3 of the *Act* sets out the ways rent can be increased. These provisions limit the frequency of rent increases to once every 12 months and require a tenant to be given three full months notice of the increase in the approved form. The provisions also limit the amount of the rent increase which must comply with the regulations.

However, Policy Guideline #30 acknowledges that parties may agree to a rent increase that is greater than what is prescribed in the regulations between fixed term tenancy agreements. To be effective, a landlord must have the tenant's written agreement, issue a notice of rent increase in the approved form, and give the tenant three full months' notice of the increase. It states:

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

[Reproduced as written.]

In this case, I find the rent increase that occurred on October 1, 2018 was not made in accordance with the *Act* and Policy Guideline #30 and was therefore ineffective. Although the Tenant signed the tenancy agreement that included the rent increase of \$150.00 per month, I find there is insufficient evidence before me to conclude the Landlord issued a notice of rent increase in the appropriate form or that the Tenant was given sufficient notice of the increase. Accordingly, I also find that the rent increase that took effect on February 1, 2020 was ineffective as it was based on the previous invalid increase. To summarize, I find that all rent increases from October 1, 2018 are cancelled and are of no force or effect.

The Tenant has demonstrated an entitlement to a reimbursement of rent. However, section 7 of the *Act* confirms that a tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do what is reasonable to minimize the damage or loss. I find the Tenant did not do what was reasonable to minimize the damage or loss. Rather, the Tenant waited for a full year before advancing his claim, paying the agreed-upon rent increase to the Landlord.

As a result, I find it is reasonable to grant the Tenant reimbursement of the rent overpayment from October 1, 2018 to May 31, 2019, a period of eight months, during which it would have been reasonable for the Tenant to have taken steps to address the overpayment. Accordingly, I grant the Tenant \$1,200.00 (8 months x \$150.00 per month). Having been successful, I also grant the Tenant \$100.00 in recovery of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary award in the amount of \$1,300.00, which may be deducted from a future rent payment at the Tenant's discretion.

As I have found that the rent increases from October 1, 2018 to present were ineffective, I order that rent due on April 1, 2020 be set at \$1,700.00 per month, subject to any increases permitted under the *Act*.

Conclusion

The Tenant is granted a monetary award for the overpayment of rent from October 1, 2018 to March 31, 2020 plus the filing fee in the amount of \$1,300.00. I order that this amount may be deducted from a future rent payment at the Tenant's discretion.

As I have found that the rent increases in dispute were ineffective, I order that rent due from April 1, 2020 forward be set at \$1,700.00 per month, subject to any increases permitted under the *Act*.

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: April 1, 2020

Residential Tenancy Branch