



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for his monetary loss or other money owed.

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

The parties confirmed receiving the other's evidence and the landlord confirmed receiving the tenant's application.

Thereafter all parties 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 written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The undisputed evidence is that this tenancy began on October 8, 2016 and ended on October 31, 2018.

The tenant submitted that he entered into a tenancy agreement with the landlord to rent the landlord's basement suite for \$700 per month.

The tenant submitted that after signing the tenancy agreement, the landlord took the document and returned it with a different coloured ink. The changes noted that \$850 had been received as payment for the last month's rent, to which he did not agree.

The tenant denied that he has ever agreed to a rent increase, although on November 1, 2017, the landlord presented the tenant with a new tenancy agreement requesting \$850 per month. The tenant submitted that he refused to sign the new tenancy agreement, but did begin paying \$850 in November 2017, to avoid being evicted and paid \$750 for October 2017.

The tenant's monetary claim is \$2,000, comprised of an illegal rent increase of \$50 October 2017, and an illegal rent increase of \$150 for the months of November 2017 through November 2018, each.

The tenant submitted copies of the rent payment receipts and a copy of the document the parties referred to as the tenancy agreement, which was titled "Application for Rent of Suite".

Landlord's response-

The landlord submitted that the tenant and his family of five, the tenant, his spouse, two teenage boys and a 10 year old girl, moved into the one-bedroom suite on October 8, 2016. The landlord said the tenant agreed to pay \$700 per month from November 2016 until he found a suitable place for rent.

The landlord submitted that this was a temporary arrangement until he found a more suitable arrangement for him and his family.

On top of this, according to the landlord, the tenant's parents stayed with him for six months without his knowledge. At that point, the landlord submitted that he served the tenant a notice to end the tenancy.

After 30 days, the tenant was unable to find a new place and he agreed to pay \$850 per month.

In his written submissions, the landlord mentioned that he had demands, which included what appears to be a monetary claim.

The landlord submitted a partial copy of a prior Residential Tenancy Branch (RTB) Decision by another arbitrator, which granted the landlord a monetary award of \$1,700 for a loss of rent for October and November 2018.

The Decision was dated July 22, 2019, and the tenant did not attend the hearing.

Analysis

Under section 42 of the Act, a landlord must not impose a rent increase for at least 12 months from the date on which the tenant's rent was first payable for the rental unit.

The landlord also must give the tenant a notice of a rent increase at least 3 months before the effective date of the increase on the approved form.

Section 43 states a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or agreed to by the tenant in writing.

If a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from the rent or otherwise recover the increase.

In this case, it was necessary to make a determination on the document the parties referred to as a tenancy agreement. After review, while the document said it was an application to rent the suite, I find it outlined the terms of the tenancy. The document specifically set out that monthly rent was \$700 and that the suite would be occupied by 2 adults and 3 children.

The language in the document also provided for terms that a formal tenancy agreement contains. I therefore determined the document was a legal and binding agreement between the parties, and that monthly rent was set at \$700, beginning October 8, 2016.

I note that it was not made clear what was meant by the imprinted receipt on the bottom of the document, and I find the language was vague and confusing. The receipt showed a payment of \$700 to apply towards the first month's rent, which was left blank, and it also mentioned \$850 as a rent payment to be applied on account of the rent for the final month of the term. I find the receipt portion of the document was of little value due to the vague language.

I must also address the previous decision of another arbitrator where it concerned the landlord's application on a separate matter.

I have determined that I am not bound by the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

The Decision submitted by the landlord was a partial copy and therefore could not determine if the matter is involving the same claim. I did not find the other arbitrator made a definitive determination of the amount of rent owed, considering the facts of this case were not before that arbitrator.

As to the tenant's monetary claim, as I have found that monthly rent, established on October 8, 2016, was \$700 per month, the earliest the landlord could increase the rent was October 8, 2017. Instead, I find the landlord demanded the tenant to pay an increase in the monthly rent, in breach of the Act, and the tenant did so, without a notice on the approved form, 3 months in advance, and without an agreement in writing.

I therefore find that beginning in October 2017, the tenant began overpaying in his monthly rent and that he is entitled to recover the over payments.

The tenant and landlord both submitted the rent receipts, which I find shows that the tenant paid \$750 in October 2017, an overpayment of \$50, and that the tenant made rent payments of \$850 for the months of November 2017 through September 2018, an overpayment of \$150 each month.

I therefore grant the tenant a monetary award of \$1,700, for the \$50 overpayment in October 2017, and the \$150 overpayments for each of the months of November 2017 through September 2018.

The tenant claimed for a rent over payment for October and November 2018; however, I was not provided receipts for those months and it is declined.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1,700.

I acknowledge the submissions of the parties that the landlord has also received a monetary order previously, and that matter of enforcement in the Provincial Court of British Columbia (Small Claims) has been held in abeyance.

I also note that the tenant's legal advocate filed a response to the claim of the landlord; however, that claim was made in the landlord's evidence, not an application, and was not an actual claim. I therefore decline to consider or further address this matter.

Conclusion

The tenant's application was granted in large part and he has been granted a monetary award in the amount of \$1,700.

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 2, 2020

Residential Tenancy Branch