



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) filed on March 24, 2020 for:

- compensation for a monetary loss or other money owed.

The tenant and the landlord 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.

Thereafter both parties were provided the opportunity to present their affirmed testimony and to refer to relevant documentary 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 monetary compensation from the landlord?

Background and Evidence

The tenant submitted that this tenancy began on February 1, 2010, and ended on March 31, 2018.

The tenant submitted a copy of a written tenancy agreement showing that he was the sole tenant listed and monthly rent was \$740.

The tenant submitted a copy of an addendum to the written tenancy agreement, signed by both parties. In the addendum, the tenant was required to obtain advanced written approval for another person to move into the rental unit, and in that case, the monthly rent was to be increased by \$50 per month, per person.

The tenant's monetary claim is \$4,850, which he explained was for an illegal rent increase, or overpayment, of \$50 per month for the entire tenancy, or 97 months.

The tenant said that he learned a few months after he moved in that the landlord could not increase the monthly rent by that amount, but confirmed that he continued to pay an additional \$50 per month until he moved out on March 31, 2018, without filing an application for dispute resolution.

In response to my inquiry, the tenant said he did not make an earlier application for dispute resolution to contest the rent increase because the landlord said he would evict him.

The tenant confirmed that his brother lived in the rental unit during the tenancy and at other times, his sister lived in the rental unit.

Landlord's response –

The landlord said that the tenant was the only legal tenant in this tenancy and the only one entitled to occupy the rental unit. During the tenancy, there was one tenant and one occupant. According to the written tenancy agreement, the tenant agreed to pay an additional \$50 per month for an additional occupant, used as an occupancy rent.

The landlord submitted that he did not increase the rent, or otherwise, he would have issued the tenant a proper notice of rent increase during the years of the tenancy.

The landlord also said that the issue of a rent increase was resolved in an earlier dispute resolution, where they settled all their issues.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, the tenant claims to have paid an extra \$50 per month for the 97 months of the tenancy due to an illegal rent increase.

After reviewing the evidence, I find the tenant signed the written tenancy agreement and the addendum agreeing to pay an additional \$50 per month for any occupants living in the rental unit.

I find the evidence shows, on a balance of probabilities, that the tenant had at least one additional occupant for the term of the tenancy and was therefore obligated to pay the extra \$50 per month. I find the extra \$50 per month was an occupancy rent, not part of the monthly rent the tenant was required to pay under the written tenancy agreement.

As a result, I find the tenant has not submitted sufficient evidence that he overpaid rent of \$50 per month for the tenancy, as he was contractually obligated to pay the extra \$50 for the additional occupant.

I therefore find the tenant submitted insufficient evidence to support his monetary claim and I dismiss his application, without leave to reapply.

Conclusion

Due to the tenant's insufficient evidence, I have dismissed his application.

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: July 31, 2020

Residential Tenancy Branch