



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, LRE, DRI, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 13, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to dispute a rent increase;
- a monetary order for emergency repairs;
- a monetary order for damage or compensation;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the Act; and
- an order granting recovery of the filing fee.

The Tenant, the Landlord, and the Landlord's Agent R.L. attended the hearing at the appointed date and time.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail on July 17, 2020. The Landlord confirmed receipt of the package two days before the hearing as they were away and could not retrieve it sooner. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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

During the hearing, the Tenant clarified that he submitted his Application to dispute a rent increase and to receive monetary compensation for the over payment of rent. As such, the Tenant's claims for monetary compensation for emergency repairs, to restrict the Landlord's right to enter and for an order that the Landlord comply with the Act are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation relating to the Landlord's rent increase, pursuant to Section 42, 43, and 67 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 11, 2017. Currently, the Tenant is required to pay rent in the amount of \$4,870.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$2,165.00 which the Landlord continues to hold.

The Tenant stated that the rent at the start of the tenancy was \$4,330.00 before he received a Notice of Rent Increase from the Landlord in the amount of \$4,870.00 effective August 1, 2018. The Tenant stated that this is above the allowable limit. The Tenant stated that the Landlord's reasoning behind the extra rent increase was to do with some home improvements which were conducted by the Landlord to the rental property. The Tenant is now claiming \$11,630.25 in relation to the overpayment of rent from August 2018 until now.

The Tenant is also claiming \$5,000.00 in relation to a promissory note that the Landlord provided to the Tenant. The Tenant stated that the Landlord agreed to pay the Tenant for the inconvenience of the renovations and the sale of the home. The note that was provided by the Tenant stated that this would be paid upon the final sale of the rental property. During the hearing, the parties agreed that the final sale has not occurred.

The Landlord's Agent responded by stating that the Tenant had requested the Landlord make renovations to the home which included an additional bedroom, with the agreement that the Tenant would pay additional rent to cover the costs. The Landlord's Agent stated that the parties signed a written agreement mutually agreeing to the additional rent increase.

The Landlord's Agent stated that the promissory note is no longer valid as the Tenant did not abide by the agreement to allow showings for the sale of the rental property. As such, the Landlord feels as though the Tenant should not receive any monetary compensation.

The Tenant agreed during the hearing that he signed an agreement with the Landlord that he would pay the additional rent in the amount of \$4,870.00 as of August 1, 2018. The Tenant stated he is not sure why he signed the document. If successful, the Tenant is seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, **or agreed to by the tenant in writing.**

In this case, I accept the oral testimony from both parties during the hearing that they mutually agreed in writing that the Tenant would pay rent in the amount of \$4,870.00 to the Landlord each month effective August 1, 2018. I find that the Tenant agreed to the increase of rent in writing, therefore is obligated to pay rent to the Landlord in the amount of \$4,870.00 as he agreed to do so. As such, I dismiss the Tenant's claim to dispute a rent increase without leave to reapply.

The Tenant has claimed for \$5,000.00 in relation to a promissory note between the parties. While the parties disagree as to if the Tenant is owed this amount, I find that the note indicates that the Tenant is entitled to compensation once the sale of the home is finalized. During the hearing, the parties agreed that the sale has not yet been finalized. As such, I find that the Tenant's claim is premature, therefore I dismiss the claim with leave to reapply.

As the Tenant was not successful with his Application I find that he is not entitled to the return of the filing fee.

Conclusion

The Tenant's Application to dispute a rent increase is dismissed without leave to reapply. The Tenant is at liberty to reapply for the additional claims made which were dismissed with 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: August 20, 2020

Residential Tenancy Branch