



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI, RR, OLC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to dispute a rent increase pursuant to section 41;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the landlord and the tenant, MC ("tenant") attended the hearing. The landlords were represented by co-landlord SD ("landlord"). The tenant testified the second named tenant on his application is his 13 year old son, who I note did not sign the tenancy agreement. At the commencement of the hearing, the landlord did not dispute service of the tenant's Application for Dispute Resolution. Both parties were prepared to have the merits of the tenant's application heard.

Preliminary Issues

The tenant's son, who did not sign the tenancy agreement is not a tenant as defined by the Act. As such, the tenant's son has no rights or responsibilities as a tenant, and I dismiss the tenant's son as an applicant in accordance with section 64 of the Act.

The tenancy ended October 31, 2020. As such, the tenant's application seeking an order that the landlord comply with the Act is no longer a dispute that may be determined under Part 5 of the Act and I dismissed this portion of the tenant's application in accordance with section 62(4).

Issue(s) to be Decided

Should the tenant recover overpayment of rent he argues was collected illegally?

Is the tenant entitled to compensation for damages, as sought?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy between the named landlord and tenant began on July 15, 2014 and became month to month on August 1, 2015. Rent was set at \$1,100.00 per month, payable on the first day of each month.

The tenant provided the following testimony. On June 15, 2019, he received a text from the landlord, indicating his brother had died and that he wants to meet with the tenant. During the discussion, the landlord advised the tenant that he needed to raise the rent from \$1,100.00 to \$1,380.00 per month. The reasoning was that since the brother died, the landlord doesn't have the money to pay for strata fees, and increased insurance. If the tenant didn't agree to the rent increase, the tenant would be required to move out, so the landlord could occupy the rental unit with his family.

The tenant testified that he told the landlord the rent increase is illegal. The landlord is required to raise the rent in accordance with the Act, to 2.5%. According to the tenant, he didn't "agree" to pay the higher rent. He knew what the landlord was doing was wrong, however he accepted it and started paying it because he was "blackmailed" into doing so. He testified that he didn't want to risk losing the rental unit.

The tenant did not file an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the rent increase when it happened. The tenant testified that he was unaware of his right to dispute it until January 2020, but he didn't file the dispute at that

time because he was scared of the covid-19 virus and was afraid he would have to move. In the tenant's view, if he filed for dispute resolution, the landlord could give him a notice to end tenancy and he didn't want to risk that when finding another place to live would be difficult with the virus around. Both he and his child were sick in January.

During the hearing, the tenant gave conflicting testimony regarding how he arrived at the amount of compensation he seeks for what he describes as an illegal rent increase. In his application and during his testimony, the tenant testified his rent was increased to \$1,380.00 per month. Other times in his testimony, he testified it was increased to \$1,385.00 per month. Both amounts are used in the dispute description in the tenant's Application for Dispute Resolution. When asked how he arrived at the amount of \$2,690.00, the amount of compensation sought in his monetary order worksheet, the tenant testified it was the difference in overpaid rent from November 2019 to October 31, 2020 multiplied by 12 months. That difference of \$245.00 (from \$1,140.00 per month to \$1,385.00 per month) multiplied by 12 months (\$2,940.00) didn't equal the \$2,690.00 sought. The tenant then testified he subtracted the "legal" increase of 2.5% from the \$2,690.00 to arrive at his figure. While the tenant did not provide a written calculation at how he arrived at his figures for this hearing, he performed a calculation during the hearing to arrive at a figure of \$28.50 which he stated should be subtracted from the \$2,940.00 twelve times.

Next, the tenant directed me to his bank statements commencing September 1, 2019. When going through the statements, the tenant was unable to account for paying rent for the month of November, although he testified he was diligent in paying his rent. According to the statements, rent payments for the months of May to September 2020 was in the amount of \$1,340.00 per month, despite the tenant's testimony that he was paying either \$1,380.00 or \$1,385.00 during this time and seeks compensation for overpayment based on these figures.

The tenant seeks \$1,440.00 as compensation for what he describes as "loss of enjoyment of property". He testified that he requested that the landlord replace the light fixture in the kitchen for more than a year. The tenant testified that there was a loose wire in the fixture and a missing bulb. His son tried to fix it, but the tenant didn't want his son to do so because it was dangerous. I asked the landlord to direct my attention to a photo of the light fixture, however the tenant was unable to do so. The tenant points out in the condition inspection report that the light fixture is noted as "D" for damaged at the beginning and end of the tenancy. For being deprived of a light in the kitchen, the tenant seeks \$640.00.

Next, the tenant seeks to be compensated \$500.00 for being required to retrieve the landlord's mail. The tenant testified that the postal worker sometimes left mail for the landlord in the tenant's mailbox. The tenant testified he was disturbed approximately once a month when the landlord came to retrieve his mail, often late at night while his son was sleeping.

The tenant also gave evidence regarding an incident where he missed a day of work to wait for a plumber when there was a water leak. He also gave testimony regarding the landlord's lack of cooperation in getting another access fob to the building. On his application, however, the tenant only sought the \$640.00 for the lack of the light fixture service and the \$500.00 for the mail pickup service he was providing. The total compensation sought in the tenant's monetary order worksheet was \$1,140.00.

The landlord provided the following testimony. The rent increase was done with the tenant's consent. He verbally gave the tenant 2 to 5 months notice of the increase. The landlord testified that the rental unit was owned by his brother and when the brother died, the landlord couldn't carry the cost of the rental unit's mortgage, strata fees and his own mortgage. He explained that to the tenant that he had to either raise the rent or move into the unit himself because he couldn't afford both. Rent was first raised to \$1,385.00 per month, but the landlord dropped it to \$1,380.00 per month when his finances were stabilized. He further dropped it to \$1,340.00 himself. When he decided to put the unit on the market, the tenant sought to purchase it, however the tenant decided not to later.

The light fixture was damaged, but working when the tenant moved in. It appears that the bulbs had been pulled out, making the wires dangle. It was easily fixed after the tenant moved out. Regarding the tenant's claim of \$500.00 for mail pickup, the landlord describes this as "ludicrous". The tenant picked up his own mail from the mailbox and there were occasional pieces of mail for him there. The tenant frequently withheld the landlord's mail "hostage" so that the landlord would be forced to come see him. The tenant could have left the landlord's mail in the mailbox for the landlord to pick up himself, since he had his own mail key. The landlord suffered losses because the tenant didn't provide him with important pieces of mail that he never told the landlord about.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Based on the evidence of the parties, I find the landlord clearly violated section 43 of the *Act* when he increased the rent beyond the amount calculated in accordance with the regulations. Despite this finding, the tenant is still required to provide evidence to establish all of the points as described above to be awarded compensation.

It is worth noting at the outset that the tenant was extremely disorganized when presenting his claim. He was unable to provide answers to basic questions such as how he arrived at the figure of \$2,690.00 for the claim of an “illegal rent increase”. The tenant provided a vague answer about overpayment calculated on an amount of rent that he was not, in fact, paying. When asked to clarify, the tenant then indicated this higher amount should be reduced by the amount of rent increase the landlord could have obtained “legally” but did not provide me with any sort of spreadsheet to show his calculations.

Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

...

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

When an applicant provides confusing, contradictory or misleading evidence, it is not the role of the arbitrator to reconcile the evidence, only to determine whether the applicant has provided clear evidence to sufficiently establish their claim. In this case, I am not satisfied that the applicant has provided sufficient evidence to establish the value his claim because his evidence was convoluted and confusing. (point 3 of the 4-point test).

I also find the tenant continued to pay the increased rent until the end of the tenancy. By doing so, it stands to reason that the amount of “overpayment” continued to grow. As a result, the amount the tenant seeks as compensation for the overpayment also grew. The tenant has not shown any attempt to mitigate the damage or loss (point 4 of the 4-point test).

When the landlord told the tenant that he was going to raise the rent, the tenant testified he told the landlord right away that the rent increase was “illegal”. Despite this, the tenant chose to accept the higher rent because he was concerned the landlord would serve him with a notice to end tenancy. He testified that in January, 2020, he considered filing a dispute with the Residential Tenancy Branch, however didn't do so because he was afraid he would be evicted, once again.

Estoppel is defined by Black's Law Dictionary, sixth edition, as follows:

Estoppel means that a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly.

The tenant made a conscious choice to accept the increased rent rather than take the chance that the landlord may serve him with a notice to end tenancy. By choosing to remain in the rental unit and start paying the higher rent, the tenant allowed the landlord to continue making the mortgage payments and strata fees on it while continuing to pay the mortgage on his own residence. For the tenant to concede to paying the increased rent and then seek to have the increased rent returned to him after the tenancy ended would be unjust. Once again, when the rent increase was imposed upon him, the tenant could have disputed it, but he chose not to do so. Based on the legal doctrine of estoppel, I dismiss the portion of the tenant's claim seeking to be compensated for the increased rent.

The tenant also seeks compensation for what he describes as a loss of enjoyment of property. First, he seeks \$640.00 for loss of service of a light fixture. Despite his testimony that he supplied me with a photo of the fixture, I did not have one to corroborate the tenant's claim that it was in such poor condition that he was deprived of

\$640.00 worth of services that was not provided. The landlord testified that it was simply a loose wire that was easily fixed once the tenant moved out. Once again, I find the tenant has not provided sufficient evidence to satisfy me the value of the damage or loss (point 3 of the 4 point test) and I dismiss this portion of his claim.

The last portion of the tenant's claim is for \$500.00 for picking up the landlord's mail. The tenant described requiring compensation for this because he retrieved the landlord's mail while getting his own from the mailbox. He also describes the landlord attending at the rental unit in the late evening to come get his mail, no more than once a month. In testimony and in the documentary evidence provided, I see no indication that retrieving the landlord's mail was an obligation or duty imposed upon the tenant by the tenancy agreement or by the Act. The landlord testified he would have preferred the tenant leave the mail in the box for him to retrieve on his own. I find the tenant has provided insufficient evidence to establish the existence of any damage (point 1 of the 4 point test). I also find the tenant has not proven the landlord violated the tenancy agreement or the Act (point 2), and he has not sufficiently proven the value of the damage sought (point 3). This portion of the tenant's claim is also dismissed.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed without 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: December 04, 2020

Residential Tenancy Branch