



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue

At the outset of the hearing both parties confirmed that the tenants moved out on February 28, 2021 and now seek a monetary order to compensate them for what they allege are overpayments of rent. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for overpayment of rent?
Are the tenants entitled to the recovery of the filing fee?

Background and Evidence

IJH gave the following testimony on behalf of the tenants. The tenancy began on March 15, 2017 with the rent due on the 15th of each month. The tenancy ended on February 28, 2021. IJH testified that the rent at the outset of the tenancy was \$1000.00. IJH

testified that the landlord raised the rent more than the allowable amount as per the Residential Tenancy Branch Regulations. IJH testified that her family is from Manitoba and that they were not aware of their rights as tenants in British Columbia. IJH testified that she became aware of the allowable amounts in late January 2021. IJH testified that over their tenancy they overpaid \$4313.00. IJH testified that because they moved out without paying the rent on February 15th, 2021, \$1135.00 rent should be deducted from that amount leaving the tenants with a claim for \$3178.00 in rental overpayments.

KT gave the following testimony on behalf of the landlords. KT testified that all increases were done by agreement and that the tenant didn't mention that they had an issue with the increases. KT testified that he discussed the increases with the tenant each year and they agreed to them.

Analysis

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

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must provide sufficient evidence of the following four factors; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, **the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed,** and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case the parties had a four-year tenancy. The tenant didn't dispute any of the increases until one month before the tenancy ended. The tenants' position that they were not aware of the laws is an insufficient reason to not know their rights. I find that waiver applies in the matter before me. The tenants waived their right to dispute the increases as they accepted and paid them without any objection during a four year tenancy. The waiver of rights continued through each rent increase. As noted above, a party must mitigate their losses to be successful. In this case I find that the tenants have

not done that and therefore haven't satisfied all four elements required under section 67 of the Act. I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: March 25, 2021

Residential Tenancy Branch