Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

Introduction

The tenants filed an Application for Dispute Resolution on February 26, 2021 disputing a rent increase above the amount allowed by law; compensation for monetary loss, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 8, 2021.

One of the tenants and the landlords attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant stated they gave the notice of this hearing to the landlord. This included their prepared evidence that they presented at this hearing. The landlord confirmed they received this in advance of the hearing. The landlord provided a single piece of evidence. On this basis, I proceeded with the hearing at the scheduled time.

Issues to be Decided

Did the landlord increase the rent in accordance with s. 41 of the *Act*?

Are the tenants entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenants presented a copy of the tenancy agreement they signed together with a third-party roommate on October 23, 2019. This was for the amount of "$625 each month to the landlord" on the first of each month. This was for the tenancy starting on November 1, 2019. They paid a security deposit and pet damage deposit of $321.50 each on November 1, 2019. In the hearing the landlords clarified that the tenants here were paying one-half the total rent amount, with the third-party roommate paying the other one-half amount, totalling $1,250.

The third-party roommate moved out from the unit in January 2020.

Both the landlords and tenants provided a copy of the tenancy agreement that the parties jointly signed on February 1, 2020. This was for the tenancy starting on that date, without the third-party roommate. The agreement specifies $1,250 for rent payable on the first day of each month. The security deposit and pet damage deposit amounts were carried over from November 1, 2019.

The third-party roommate moved out from the unit in January 2020. The tenant who attended the hearing provided that "this was a completely separate agreement".

The tenants who remained in the unit signed a new tenancy agreement with the landlords for the tenancy continuing from February 1, 2020. After the arrangement shifted in February 2020, a relation of the tenant informed them that "they [i.e., the landlords] can't just increase the rent like that."

The tenant in the hearing described how they went to pay rent for February 1, 2020 and at that time "a new tenancy agreement was there." The third-party roommate had moved out by that time, and "the landlord did not find a new tenant for that bedroom." According to the landlords, the tenants stated they were not comfortable with a new person in the bedroom previously occupied by the third-party roommate. To this, the landlords responded: "it falls on you then."

In the hearing, the landlords provided that they discussed this when the third-party roommate left in January. They explained to the tenants here that if they stayed, they would be taking on the full rent amount of $1,250. They maintained that they "talked a lot before the tenancy agreement was signed" and "We wanted them to be sure that they knew what they were getting."

The tenant in the hearing presented that previously in 2019 the third-party tenant was at one point the sole tenant in the unit, and after a different prior tenant moved out, the third-party

tenant was not presented with a new tenancy agreement for them to provide the full amount of rent. The landlord presented that this was not relevant.

The tenants advised the landlords of the end of tenancy on January 31, 2021. This was one month in advance of their move-out date on March 1.

The tenants seek compensation for the amount of rent they paid in excess of the $625 amount. A legal amount of rent increase, by the tenants' calculation, would be $641.25 at most, which means they paid $608.75 over the legal amount each month. Multiplying this by the 13 months of the tenancy agreement, the tenant claims $7,913.75.

The tenants make an additional monetary claim for utility amounts they paid, this where the 2020 agreement did *not* include utilities in the base rent amount. Their previous tenancy agreement did provide that utilities were included in the rent amount. These amounts are:

- natural gas: $786.90
- electricity: $357.16
- water/sewer/garbage: $581.92

The above amounts are indicated on the tenants' monetary order worksheet prepared for this hearing, dated March 2, 2021. These amounts add up to $1,725.88. The tenants provided copies of invoices; most of these contain notation that shows the amounts owing divided in half, representing the amounts that were paid by the tenants.

In the hearing the landlords provided the separate upstairs tenant (who is the neighbour to the tenants here) would receive a summary of utility amounts owing, and bills coming up. This was just as a "heads up" measure. They maintain that in their discussions they were clear with the tenants that utilities would be a separate payment – this discussion was had at the time the tenants signed a new tenancy agreement with the landlord in February 2020. They clearly stated that the $1,250 rent amount does not include utilities.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss 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.

The landlord and tenant both agreed there was a new tenancy agreement, with the tenants here being the two tenants named on that agreement. This was for the amount of $1,250. I find the new tenancy agreement that the parties signed on February 1, 2020 makes the prior tenancy agreement null and void.

I find the basic elements of a valid contract – i.e., the new tenancy agreement – were in place between the parties. This is based on the landlords' testimony in the hearing. I find the landlords credible when they present that there were discussions with the tenants prior to their signing the tenancy agreement. In particular, there was the offer of the new tenancy agreement with its terms set out therein. The tenants then accepted this offer, with the value being the right to maintain the rental unit exclusively, thereby forming the important element of consideration.

More importantly, I accept landlords' evidence that the tenants had the capacity to understand the terms and nature of the tenancy agreement. There is no evidence of coercion or an inordinate amount of pressure from the landlord for the tenants to sign the agreement. In sum, I accept the landlords' evidence that there was discussion with the tenants.

I find the amount of rent that these two tenants were responsible for was not a rent increase. This was a separate tenancy agreement and I find the evidence is clear that the tenants signed this agreement, thereby agreeing to its terms. This was an *agreement*, not a unilateral rent increase imposed by the landlords.

On this portion of the tenants' claim, I find there was no breach of the *Act* by the landlords. This was not a situation where the landlords imposed an illegal rent increase. I find there is no loss to the tenants for rent amounts they paid from the start of that agreement through to the end of the tenancy.

With regard to the four core points of any monetary claim set out above, I find the tenants have not accurately presented what the excess cost of utilities paid was. The invoices presented do

not equal the claimed amounts that the tenants set out on their prepared monetary order worksheet. Additionally, they did not provide proof that they had actually paid these utility amounts; therefore, they have not met the burden of proof to show this was in fact a monetary loss to them.

Alternatively, I find the landlords are credible that the subject of utilities formed part of the discussions had with the tenants prior to their signing the fresh tenancy agreement at the beginning of 2020.

In line with the above four points for consideration, the *Act* s. 7 outlines that a party who requests compensation "must do whatever is reasonable to minimize the damage or loss." I find if the issue was prevalent for the tenants as claimed, they had legal avenues to pursue the rectification thereof at the time of the tenancy. There is no record that they raised objections to the amount of rent, or the provision of one-half the utility amounts during the tenancy. This does not represent minimizing the damage or loss when the tenants make their claim for compensation after the tenancy ended, after a duration of 13 months.

For the above reasons, I dismiss the tenants' claim for compensation. Because they were not successful in their Application, I make no award for reimbursement of the Application filing fee.

Conclusion

I dismiss the tenants' Application 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 s. 9.1(1) of the *Act*.

Dated: June 23, 2021

Residential Tenancy Branch