Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. As the Agent acknowledged receipt the Notice of Dispute Resolution Proceeding by or on behalf of the Landlord, including a copy of the Application and the Notice of Hearing, and raised no concerns regarding service method or timelines, the hearing proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence and neither party raised concerns about service methods or timelines, I accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence, submissions and testimony before me for consideration in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) and the principles of natural justice and administrative fairness, I refer only to the relevant and determinative facts, evidence, submissions and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the rental unit address and the Landlord's address are the same on the tenancy agreement, the parties were in agreement that the Tenant's rented a separate suite on the lower level of the home and did not share either a kitchen or a bathroom with the Landlord/owner of the property. As a result, I am satisfied that a tenancy to which the Act applies existed, and that section 4(c) of the Act does not apply.

Preliminary Matter #2

In the Application an applicant with the initials C.W. was also named as an applicant. However, C.W. is not named as a tenant in the tenancy agreements and at the hearing, the Applicants confirmed that C.W. is their dependent child. The Agent did not dispute that C.W. is the dependent child of L.W. and X.H. whom I will refer to collectively throughout this decision as the Tenants, rather than a tenant under the tenancy agreement.

Based on the above I am satisfied that C.W. was an occupant or the rental unit, not a tenant, and therefore has no rights or obligations under the Act. As a result, the Application was amended to remove C.W. as an Applicant.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

There are two tenancy agreements in the documentary evidence before me for consideration. The first tenancy agreement signed November 20, 2018, names only X.H. as a tenant and is for a one year fixed-term commencing on December 1, 2018, and ending on November 30, 2019. The tenancy agreement states that at the end of the fixed term, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenants give notice to end the tenancy at least one clear month before the end of the fixed term set out above. The tenancy agreement states that rent in the amount of $900.00 is due on the 1st day of each month, which includes water,

electricity, internet, heat, natural gas, sewage disposal, garbage collection, and recycling services, along with a refrigerator, stove and oven, window coverings, washer, dryer, and a parking spot for one vehicle. The tenancy agreement states that a one page addendum including seven additional terms forms part of the tenancy agreement. Of particular note in relation to this dispute, term six of the addendum to the tenancy agreement (the addendum) states that utility costs will be shared and that the Tenants are to pay $100.00 per month for utilities. It also states that a security deposit in the amount of $400.00 is required.

The Second tenancy agreement, which lists both X.H. and L.W. as tenants, is signed on November 30, 2019, and is for a one year fixed-term commencing on December 1, 2019, and ending on November 30, 2020. The second tenancy agreement is largely the same as the first one, except with respect to the dates of the fixed term, the addition of L.W. as a named tenant, and the amount of rent payable each month, which was now $1,000.00. Again, the tenancy agreement stated that a one page addendum including seven additional terms forms part of the tenancy agreement. The Addendum submitted appears identical to the first addendum except for the signature date, and again requires the tenants to pay $100.00 per month towards utilities in addition to rent.

At the hearing the parties agreed that the Tenants were always required to pay an additional amount towards utilities on top of rent, however, they disagreed about the amount. The Tenants asserted that the tenancy agreements and addendums correctly reflect the tenancy agreements entered into and the amounts due and paid by them for rent and utilities during the tenancy. In contrast, the Agent argued that the first written tenancy agreement and addendum are incorrect, and do not accurately reflect the original oral agreement entered into. Specifically, the Agent stated that the Tenants were to pay $200.00 per month for utilities, not $100.00, and that the second tenancy agreement was only entered into to correct this inaccuracy in the first written tenancy agreement.

The Tenants stated that they paid 6 months worth of utilities (charged at $100.00 per month) to the Landlord up-front, for December 2018 – May 2019, as well as December 2018 rent in the amount of $900.00. This was not disputed by the Agent at the hearing. The Tenants stated that rent in the amount of $900.00 per month was then paid by way of etransfer to the Landlord between January 2019 – May 2019. The Tenants stated that in June of 2019, they began paying the Landlord $1,000.00 per month by etranfer for both rent and utilities, as their pre-paid utility amounts had run out. The Tenants stated that in September of 2019, the Landlord requested that they pay more rent, and began charging them $1,000.00 per month in rent, plus $100.00 for utilities effective

October 1, 2019. The Tenants stated that as a result, they began paying the Landlord $1,100.00 per month for rent and utilities, primarily by way of etransfer, starting in October of 2019.

The Tenants stated that on November 30, 2019, they signed a new tenancy agreement with the Landlord in the above noted terms, and that they therefore continued to pay the Landlord $1,100.00 per month for rent and utilities between December 2019, when the new tenancy agreement commenced, and September 30, 2020, when the tenancy ended. The Tenants submitted copies of their tenancy agreements and bank statements in support of their testimony. They also stated that for any months not shown in the bank statements before me for review and consideration, cash was used for the payment of rent and utilities.

The Agent stated that they are the Landlord's accountant and that they first met the Landlord in June of 2019, as the Landlord was planning to leave the country and wanted assistance preparing non-resident remittance documentation for tax purposes. The Agent stated that although no documentation with regards to the amount of rent and utilities payable under the tenancy agreement was provided to them at that time, the Landlord advised them that rent and utilities were roughly $1,100.00 per month, which is the amount they used when filing the Landlords taxes. The Agent stated that it was their understanding that there was an oral agreement in place between the Landlord and the Tenants for the payment of $200.00 per month for utilities, in addition to the $900.00 in rent owed per month. As a result, the Agent stated that they believe that rent and utilities was always supposed to be $1,100.00 per month combined.

The Agent argued that when the Landlord approached the Tenants in September of 2019, it was not to increase their rent, but rather to advise them that there had been an error in the drafting of the first written tenancy agreement and therefore a lack of proper rent and utility payment by the Tenants, both of which had gone unnoticed to the Landlord until that point. The Agent stated that at the end of the fixed term for the first tenancy agreement, a second tenancy agreement was entered into, not for the purpose of increasing rent, but for the purpose of correctly recording the initially agreed upon combined rent and utility amount of $1,100.00 per month.

The Tenants disagreed, stating that the first tenancy agreement and their bank records clearly demonstrate that rent at the start of the tenancy was $900.00 per month, plus $100.00 per month in utilities, and reasserted their position that the Landlord had improperly increased their rent contrary to the requirements of the Act, when they

increased the rent by $100.00 per month in October of 2019, and the subsequent tenancy agreement entered into.

The Tenants therefore sought the return of $200.00 in rent paid in October and November of 2019, as they stated that the Landlord was not entitled to increase their rent at that time as it had been less than 12 months since the start of their tenancy. They also sought the return of $775.00 in overpaid rent between December 2019 – September 2020, as they stated that the Landlord had improperly increased their rent under the second tenancy agreement above the maximum allowable amount of 2.5%.

The Agent argued that the Landlord had entered into the verbal agreement with the Tenants with regards to utilities, as they were new to the country at the time the tenancy agreement was entered into and that they were therefore not aware of the importance of documentary evidence. The Agent also alleged that the Tenants were more familiar with the Act and the rules surrounding tenancies than the Landlord, and placed blame on the Tenants for not helping the Landlord better understand the laws and requirements surrounding tenancies. Further to this, the Agent stated that the Tenants could have asked the Landlord not to increase their rent.

The Tenants stated that as the Landlord was referred to them by a friend, they tried at all times to remain amicable and trusted that the Landlord was acting properly and in good faith. The Tenants stated that they even helped the Landlord with things such as property maintenance and translation. The Tenants stated that the Landlord not only breached the Act but also breached their trust when they acted in bad faith by increasing their rent in October of 2019 without the right to do so under the Act, and by increasing their rent above the allowable maximum rent increase amount in December of 2019, and without service of a proper notice of rent increase, when they entered into a new fixed term tenancy agreement for the same rental unit.

The parties were in agreement that no notice of rent increase forms complying with the requirements of the Act were ever served on the Tenants. In addition to the $975.00 sought above, the Tenants also sought recovery of their $100.00 filing fee.

Both parties submitted documentary evidence for my review and consideration.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 41 of the Act states that a landlord must not increase rent except in accordance with this Part, and sections 42 and 43 of the Act set out, how, when, and by how much, rent may be increased. Section 43(5) of the Act also states that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The parties disputed the amount of rent and utilities due under the first tenancy agreement and addendum, whether the Landlord had in fact increased rent contrary to the Act in October of 2019, whether the Landlord had again improperly increased the rent via the second tenancy agreement, and therefore whether the Tenants had overpaid rent. As set out below, I am satisfied that the Landlord did in fact increase the rent contrary to the Act, in both October of 2019, when rent was increased by the Landlord less than 12 months after the start date for the tenancy, and in December of 2019, when the Landlord increased rent between fixed term tenancies for the same rental unit and tenants, and without having first served a notice of rent increase as required by the Act, contrary to Residential Tenancy Policy Guideline (Policy Guideline) #30 and sections 42 and 43 of the Act. I am also satisfied that overpayments on the part of the Tenants therefore occurred, and that the Tenant's are therefore entitled to the return of the amounts overpaid in rent, pursuant to section 43(5) of the Act.

Although the tenancy agreements and addendums were confusing with regards to what was, and was not included in the payment of rent, as section three of both tenancy agreements directly conflicted with term six of the addendums with regards to utilities, the parties agreed at the hearing that additional amounts were owed for utilities each month on top of rent. As a result, and as term six of the addendums states that additional money is owed each month for utilities, I am satisfied that additional money was owed to the Landlord each month for utilities, above the monthly rent amount payable under the tenancy agreements. Having made this finding, I will now turn to the matter of what amounts were payable under the first tenancy agreement and addendum for both rent and utilities.

Although the Agent argued that the first written tenancy agreement and addendum are incorrect with regards to the payment of rent and utilities, and do not reflect the original oral agreement in place between he parties with regards to the payment of rent and utilities, an argument also made by the Landlord in their written submissions, I disagree.

The first tenancy agreement and addendum state that rent is $900.00 per month and that $100.00 is required each month for utilities in addition to rent. Bank records submitted by the Tenants support that these amounts are correct, and although the bank records show that only $900.00 was paid per month via etransfer between January 2019 – May 2019, the Tenants stated that they paid for utilities for this period in advance prior to the start of the tenancy, which was not disputed by the Agent at the hearing. As a result, I find as fact that the Tenants paid for these utilities in advance. Further to this, the Tenants denied that any agreement, oral or otherwise, existed at or prior to the time the written tenancy agreement was entered into, with regards to the payment of rent and utilities.

The bank records before me from the Tenants show etransfer payments of $1,000.00 per month between June 2019 – September 2019, and then $1,100.00 per month starting in October 2019. This aligns with the amounts payable under the first tenancy agreement and addendum in the documentary evidence before me and the affirmed testimony of the Tenants at the hearing that rent was $900.00 per month, plus $100.00 in utilities under the first tenancy agreement. It is also in line with he Tenants testimony that the Landlord improperly increased their rent by $100.00 per month in October of 2019.

At the hearing the Agent argued that the Landlord did not in fact increase the rent in October of 2019, but rather began enforcing the original oral agreement between he parties that $200.00 in utilities was due each month in addition to rent, however, for the following reasons I do not accept this argument. Although I accept that the Landlord advised their accountant (the Agent) in June of 2019 that rent and utilities were approximately $1,100.00 per month for the rental unit, and that this amount was therefore used by the Agent in preparing the Landlord's taxes, the Agent acknowledged that the Landlord had not provided them with documentary evidence to support the rental and utility amounts being claimed by them in June of 2019, and had only told them that rent and utilities were "roughly" $1,100.00 per month for the rental unit. While I appreciate that the Agent may honestly have believed in filing the Landlord's taxes that rent and utilities for the rental unit totalled $1,100.00 per month, what I must be satisfied on in assessing the Tenant's Application is the actual agreement in place between the Landlord and the Tenants with regards to the payment of rent and utilities, not the Agent's subsequent understanding of that agreement.
Having reviewed the evidence, testimony and submissions before me for consideration, I find the first written tenancy agreement and addendum before me for consideration more compelling evidence of the actual agreement in place between the Landlord and the Tenants with regards to the amount or rent and utilities due, than the Landlord's tax

documents, which are based on their self-reported rental income, or the testimony of the Agent and the submissions of the Landlord that an oral agreement contrary to the first written tenancy agreement was in place, which the Tenants denied. I also do not find the utility bills submitted by the Landlord or the Agent of assistance in determining the accuracy of the written tenancy agreements and addendums, as the parties agreed that the Tenants were not required to pay a portion of the actual amounts charged each month for utilities, but rather a fixed amount towards utilities each month.

Based on the above, I find as fact, on a balance of probabilities, that the terms of the first tenancy agreement were as set out in the written tenancy agreement for a tenancy commencing on December 1, 2018, and ending on November 30, 2019, and the associated addendum. As a result, I am satisfied that $1,000.00 was owed by the Tenants to the Landlord each month under the first tenancy agreement; $900.00 for rent and $100.00 for utilities, and I dismiss the Landlord's argument that an oral tenancy agreement contrary to these terms existed.

Section 42(1) of the Act states that a landlord must not impose a rent increase for at least 12 months after either the date on which the tenant's rent was first payable for the rental unit, if the tenant's rent has not previously been increased, or the effective date of the last rent increase made in accordance with this Act, if the tenant's rent has previously been increased. As the parties were in agreement that the Landlord began charging and collecting $1,100.00 per month in rent and utilities effective October 1, 2019, which is less than 12 months after the start date of the first tenancy agreement, I therefore find that the Landlord increased rent and/or utilities by $100.00 per month in October of 2019, contrary to the Act. As a result, I find that the Tenants are therefore entitled to the return of $200.00 in overpaid rent for the period of October 1, 2019 - November 30, 2019, pursuant to section 43(5) of the Act.

Having made the above findings, I will now turn to the matter of the rent increase under the second tenancy agreement. Although the Agent argued at the hearing that the purpose of the second tenancy agreement was to bring the written tenancy documents in line with the original oral agreement between the parties, an argument that was echoed by the Landlord in their written submissions, as stated above, I have already dismissed the argument of the Agent and Landlord that an oral agreement contrary to the terms set out in the first written tenancy agreement existed. Further to this, although the Landlord and Agent both argued that the second tenancy agreement was created to accurately reflect the oral agreement in place between the Tenants and the Landlord that rent in the amount of $900,00, plus $200.00 for utilities was due each month, this is not what is reflected in the second tenancy agreement. Instead, the second tenancy

agreement increases rent to $1,000.00 per month from the previous $900.00 and leaves the monthly utility amount due under term six of the addendum as $100.00. It therefore makes no sense to me that the purpose of the second tenancy agreement was to correctly identify the terms of the initial oral tenancy agreement, as alleged by the Agent and Landlord, when the written terms of the second tenancy agreement and addendum do not reflect the oral terms of the tenancy agreement the Agent and Landlord argue were in place.

Residential Tenancy Policy Guideline (policy Guideline) #30, section D states that a landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term, however, it stipulates that rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met. As X.H. is a tenant under both the first and second tenancy agreement, neither party raised arguments that the other tenant L.W., who is X.H.'s spouse, had not continuously resided in the rental unit under both tenancy agreements, and both the address and the terms of the first and second tenancy agreements are the same, with the exception of the amount of rent due each month, I am satisfied that section D of Policy Guideline #30 applies.

Based on the above, and as the parties were in agreement that no notice of rent increase forms complying with the requirements of the Act were ever served on the Tenants, I find that the Landlord was not entitled to increase the rent from $900.00 per month to $1,000.00 per month under the second tenancy agreement. As a result, and pursuant to section 5 of the Act, which states that landlords and tenants may not contract outside of the Act and that any attempt to do so is of no effect. I find that rent remained at $900.00 per month. Although the Tenants only sought the difference between the maximum yearly rent increase allowable under the Act at the time the second tenancy agreement was entered into, and the amount of the rent increase charged by the Landlord under the second tenancy agreement, as set out above, I have already found above that the Landlord was not entitled to increase the rent at all between the two fixed term tenancy agreements, pursuant to section D of Policy Guideline #30 and the Landlord's failure to serve a proper notice of rent increase as required by sections 42 and 43 of the Act.

As a result of the above findings, and as the addendum to the second tenancy agreement states that utilities in the amount of $100.00 per month are due, I therefore find that only $1,000.00 per month in rent and utilities was due under the second tenancy agreement, the same amount due under the first fixed term tenancy agreement. As I am satisfied based on the testimony of the parties at the hearing and the

documentary evidence before me, including but not limited to the Tenant's bank statements, that the Tenants paid $1,100.00 per month between December 1, 2019, and September 30, 2020, when the parties agreed the tenancy ended, I therefore find that the Tenants overpaid rent by $100.00 per month during this period. Pursuant to section 43(5) of the Act, I therefore grant the Tenants recovery of $1,000.00 in rent overpaid by them between December 1, 2019 – September 30, 2020.

As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $1,300.00 and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$1,300.00**. The Tenants are provided with this Order in the above terms and if the Landlord fails to pay the $1,300.00 as ordered above, this Monetary Order may be served on the Landlord and filed in the Small Claims Division of the Provincial Court, where it may be enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, and I apologize for the delay, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and any associated orders, nor my authority to render them, is affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 7, 2021

Residential Tenancy Branch