



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 28, 2022 (the “Application”). The Tenants applied as follows:

- To be paid back for the cost of emergency repairs made during the tenancy
- To dispute a rent increase that is above the amount allowed by law
- For reimbursement for the filing fee

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to be paid back for the cost of emergency repairs made during the tenancy?

2. Are the Tenants entitled to dispute a rent increase that is above the amount allowed by law?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed the Tenants moved into the rental unit May 01, 2018, and that there is a verbal tenancy agreement between them. The parties agreed rent was \$800.00 at the start of the tenancy and that rent is due on the first day of each month. The parties agreed the Tenants paid a deposit at the start of the tenancy.

Emergency Repairs

The Tenants testified as follows. They are seeking reimbursement for the cost of a new woodstove they purchased for the rental unit. The pellet stove and one baseboard in the rental unit stopped working in November of 2021. The pellet stove was the primary heating system in the rental unit. Tenant J.G. talked to the Landlord in person about the pellet stove not working and the Landlord refused to repair it. The Tenants tried to reach a local dealer about repairing the pellet stove but could not reach them and could only find a source for the broken part in another country. The Tenants purchased a new woodstove. The Tenants did not provide the Landlord with a written account of the replacement and the receipt for the woodstove until they served the Landlord the Application.

The Tenants submitted an invoice showing they paid \$3,048.64 for the woodstove. The Tenants did not submit further relevant documentary evidence.

The Landlord testified as follows. The pellet stove in the rental unit stopped working in November 2021. The pellet stove was not the primary heating system in the rental unit because there was another pellet stove and six baseboard heaters. Tenant J.G. spoke to the Landlord and said the part to fix the pellet stove was \$800.00 and they did not want to put \$800.00 into an old pellet stove and wanted a new woodstove instead. The pellet stove could have been repaired for \$800.00. There was a dealer in town that could have repaired the pellet stove. The verbal agreement between the parties from the start of the tenancy was that the Tenants would repair or replace appliances in the rental unit if issues arose. They agree the Tenants did not provide them with a written

account of the replacement and the receipt for the woodstove until they served them the Application.

In reply, the Tenants denied that there was a verbal agreement between the parties from the start of the tenancy that the Tenants would repair or replace appliances in the rental unit if issues arose.

Rent Increase

The Tenants disputed a rent increase they paid from June of 2021 to April of 2022. The Tenants testified that rent was raised from \$850.00 to \$900.00 during the relevant time. The Tenants submitted that there was a rent freeze due to the pandemic during the relevant time. Further, the Tenants testified that they did not receive proper notice of the rent increase. The Tenants sought \$500.00 as reimbursement for rent paid during the relevant time.

The Landlord testified that rent was increased from \$850.00 to \$900.00 due to their own costs in relation to the rental unit. The Landlord said they did not know about the rent freeze due to the pandemic.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Emergency Repairs

Section 33 of the *Act* addresses emergency repairs and states:

33 (1) In this section, "emergency repairs" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing...

(iii) the primary heating system...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

(emphasis added)

I decline to award the Tenants the cost of the new woodstove they purchased for the rental unit pursuant to section 33 of the *Act* for two reasons.

First, the parties gave conflicting testimony about whether the pellet stove was the primary heating system in the rental unit and there is insufficient further compelling evidence before me to prove it was the primary heating system. In the circumstances, I am not satisfied the replacement of the pellet stove was an emergency repair as that term is defined in section 33(1) of the *Act*.

Second, the parties gave conflicting testimony about whether the pellet stove could have been repaired rather than replaced and there is insufficient further compelling evidence before me to prove it could not have been repaired. In the circumstances, I am not satisfied it was reasonable for the Tenants to replace the pellet stove rather than repair it. Further, I am not satisfied the amount sought is reasonable because the Tenants spent \$3,048.64 on the woodstove and the Landlord testified that the pellet stove could have been repaired for \$800.00.

Given the above, the request to be paid back for the cost of emergency repairs made during the tenancy is dismissed without leave to re-apply.

Rent Increase

Part 3 of the *Act* addresses rent increases and states:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements: additional occupants].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) 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.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution...

(5) 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.

Notice of rent increase has no effect

43.1 (1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

- (a) is received before September 30, 2021, as determined under subsection (1) of this section, and
- (b) has an effective date that is after March 30, 2020 and before January 1, 2022.

I accept that the Landlord increased rent from \$850.00 to \$900.00 between June of 2021 to April of 2022 because the Landlord did not dispute this. I find the rent increase was contrary to the *Act* for two reasons. First, I accept that the Landlord did not issue the Tenants a proper rent increase notice in accordance with section 42(2) and (3) of the *Act* because the Landlord did not dispute this. The Landlord was not permitted to increase rent verbally. Second, there was a rent freeze between March 30, 2020 and January 01, 2022 due to the pandemic.

In the circumstances, I accept that the Tenants paid an illegal rent increase and award the Tenants the \$500.00 sought. I note that I calculate the rent increase paid to be \$550.00; however, the Tenants stated in the hearing that they are owed \$500.00 and therefore this is the amount I have awarded the Tenants.

Filing Fee

Given the Tenants have been partially successful in the Application, they are awarded \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenants are awarded \$600.00 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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

Dated: June 13, 2022

Residential Tenancy Branch