



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNDCT OLC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to dispute an additional rent increase, for a monetary order of \$2,450.00 for compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenants CF, LG and BB (tenants), the landlord and an agent for the landlord GS (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure (Rules). A summary of the evidence and testimony is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they received an evidence package from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to the parties.

Issues to be Decided

- Did the tenants provide sufficient evidence to support a rent increase contrary to the Act?

- Have the tenants provided sufficient evidence to justify monetary compensation under the Act and if so, in what amount?
- Are the tenants entitled to recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2019 and was not scheduled to revert to a month to month tenancy until August 30, 2020. Monthly rent at the start of the tenancy was \$750.00 each except for a separate “summer pricing guarantee” amendment which reduced May, June, July and August of 2019.

The tenants’ monetary claim is for \$2,550.00, which is comprised of what the tenants describe as “extra rent the tenants have been paying from September – March”, plus the filing fee. The tenants write in their application as follows:

It was communicated on August 30th that the rent would go from \$2,250 plus half of utilities to a flat rate of \$2,800 (half of utilities included). This was to accommodate a fourth roommate moving in, however the fourth roommate was communicated in early May, and there is no clause on either the contract or addendum stating the limit of tenants within the unit.

The tenancy agreement lists two tenants, LG and CF. The parties confirmed during the hearing that page 2 of the tenancy lists the monthly rent as \$750.00 each. In addition, the tenancy agreement states “pay half of hydro \$150, 50 each”.

The tenants vacated the rental unit on May 1, 2020 and waiting until April 13, 2020 to file this claim. The tenants stated that they waited until April due to not receiving receipts for rent payments made in cash and that they were provided inconsistent communication from the landlord and that they were trying to negotiate with the landlord.

The tenants submitted two letters to the landlord, the first dated January 16, 2020 and the second letter dated March 19, 2020. In the January 16, 2020 letter, the tenants ask the landlord for written receipts for payments of rent made in cash. The second issue is related to the heat in the rental unit and a third issue relates to mould in the rental unit.

In the March 19, 2020 letter, the tenants advise the landlord that they believe the rent was raised illegally and write in part:

In our contract we are to be paying \$2,250 plus 50% of utilities (\$200), however we have been paying \$2,800.00 (including the 50% of utilities), or an extra \$350/month. As per section 43.5) *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.* This means we are within our right to ask for the extra \$350/month to be paid back (\$350 x 7 months = \$2,450).

The landlord stated that the tenants agree to \$750.00 each per month at the start of the tenancy and that additional occupants would also be required to pay \$750.00 per month. There is no dispute that there were four occupants in the rental unit between September 2019 and March 2020, which are the months the tenants are claiming for the overpayment of rent due to what the tenants describe as an illegal rent increase.

Analysis

Based on the oral testimony and documentary evidence before me, and on a balance of probabilities, I find the following.

Test for damages or loss

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 sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what is reasonable to minimize the damage or losses that were incurred.

Where 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.

Firstly, I will address the amount of the tenants' claim. They are seeking \$350.00 multiplied by 7 months, being September 2019 to March 2020 inclusive. There is no dispute that there were 4 occupants in the rental unit during September 2019 to March 2020. Based on the testimony of the parties during the hearing, I find that the tenancy agreement states that rent is \$750.00 each as the tenancy agreement states "each". In other words, for four people, I find that rent should have been \$750.00 x 4, or \$3,000.00 per month, which would include the utilities as the parties agreed that the amount of \$2,800.00 would include utilities. Therefore, I find the amount of \$2,800.00 the tenants and landlord confirmed was paid, was not in excess of the agreed upon amount of rent in the tenancy agreement. Therefore, I find the tenants have failed to provide sufficient evidence to support that there was an illegal rent increase as the tenancy agreement states rent is \$750.00 each.

Given the above, I do not find it necessary to consider the sections of the Act which address rent increases as I find the tenancy agreement stated that rent was \$750.00 each and the tenants invited additional occupants knowing that they would owe additional rent by having more occupants.

Furthermore, the parties entered into a verbal agreement that the rent amount of \$2,800.00 would include utilities, which I find benefits the tenants as the tenancy agreement did not state that with 4 occupants, that utilities would be included in the monthly rent, yet the parties verbally agreed to that. The parties entering into a verbal agreement can still be enforceable under the Act, when the parties agree what that agreement was. I find in the matter before me, there was no dispute that when the rent was \$2,800.00, the utilities were included, which was paid for seven months before the tenants vacated May 1, 2020.

As a result of the above, I find the tenants have provided insufficient evidence to support parts one and two of the four-part test for damages or loss described above. Consequently, I dismiss the tenants' application due to insufficient evidence, without leave to reapply.

I do not grant the filing fee as the tenants' application was not successful.

I also note that by delaying their claim between September 2019 and April 2020, that the tenants did not meet part four of the test for damages or loss under the Act. This language is also reflected in section 7 of the Act, which states:

Liability for not complying with this Act or a tenancy agreement

7(2) **A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

[Emphasis added]

Conclusion

The tenants' application is dismissed without leave to reapply, due to insufficient evidence.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 8, 2020

Residential Tenancy Branch