



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, DRI, LRE, MNDCT, FFT

Introduction

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

- To dispute a rent increase;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An extension to the time period for disputing the 10 Day Notice;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's roommate E.V., the Landlord B.T. and an agent for the Landlord S.T. (the Agent), all of whom provided affirmed testimony. The Landlord and Agent acknowledged receipt of the Application and Notice of Hearing and the parties acknowledged receipt of each other's documentary evidence. Neither party raised concerns about service, timelines, or the acceptance of evidence by me for consideration. As a result, the hearing proceeded as scheduled and 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 and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence 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 Application.

Preliminary Matters

The parties were in agreement that the tenancy has ended. As a result, and with the Landlords' consent, the Tenant withdrew their request for cancellation of the 10 Day Notice, an extension of the time period for disputing the 10 Day Notice, and an order restricting or setting conditions on the Landlords right to enter the rental unit.

The hearing therefore proceeded based only on the Tenant's dispute of a rent increase, their monetary claim for compensation in the amount of \$2,500.00, and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Does the Tenant have grounds to dispute one or more rent increases?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The parties agreed that the tenancy began on May 15, 2016, by way of a month to month tenancy agreement, a copy of which was submitted for my review wherein rent for the entire single-family home was set at \$2,200.00, due on the first day of each month, and a \$1,100.00 security deposit was required. Another tenant not named in the Application was also included as a tenant in the tenancy agreement. The parties agreed that several amendments were made, and several subsequent tenancy agreements entered into, thereafter, the terms and conditions of which were unclear and disputed by the parties. Copies of the tenancy agreements, addendums, and amendments were submitted for my consideration. The parties disputed what portion of the premises was

rented to the Tenant and at what rental rate, at different times throughout the tenancy, and why subsequent tenancy agreements and amendments were made.

The Agent stated that the entire home was initially rented to the Tenant and another tenant, for \$2,200.00 per month, but when the Tenant had difficulty their roommate and the payment of rent, an agreement was reached between them in July of 2016, for the Tenant to temporarily rent only the upper portion of the home for \$1,350.00 per month. Although the Tenant disputed the grounds for altering the original tenancy agreement and the assertion that this arrangement was temporary, they agreed that in July of 2016 they began renting only the upper portion of the home at \$1,350.00 per month. Both parties agreed that this arrangement continued until November 2016, when the tenancy agreement was amended. Two amended copies of the tenancy agreement were submitted, one stating that the Tenant owed \$1,300.00 in rent plus 50% of utilities and internet and one stating that the Tenant owed \$1,200.00 in rent. Neither party provided an explanation for this discrepancy.

Copies of two additional written tenancy agreements were submitted for my review, one effective April 1, 2018 and one effective September 1, 2019, each listing different tenants, occupants and terms in relation to the payment of utilities and services provided. In both instances the tenancy agreements stated that the Tenant, and sometimes a roommate, was responsible for the full rent for the property, \$2,550.00 effective April 1, 2018, and \$2,700.00 effective September 1, 2019, but also contained conflicting written notations and/or addendums that the Tenant was responsible for only a portion of the rent and that other occupants were responsible for the remainder.

I advised the Tenant that it was unclear to me from the Application and the testimony of the parties what rent increases they were disputing and how they had arrived at the amount sought for overpaid rent, which was \$2,400.00 according to the monetary order worksheet. The Tenant stated that they are seeking \$150.00 per month for a 12 month period, the dates of which were not provided to me during the hearing, which totals \$1,800.00. The Tenant stated that they are seeking this amount as they only rented the upper portion of the home and were in fact collecting rent on behalf of the Landlord, not themselves, for the lower portion of the home. The Landlord maintained the position that other than the brief period of time in 2016 where the rent was temporarily reduced to \$1,350.00 and the Tenant was using only the upper portion of the home, the entire home was rented to the Tenant, and sometimes the Tenants roommates, and it was therefore their responsibility to find and replace their own roommates and pay the full amount of rent owed under the tenancy agreement. As a result, the Landlord stated that

there was no unlawful rent increase and the Tenant is therefore not entitled to the recovery of any rent paid.

In their Application and monetary order worksheet the Tenant sought recovery of \$3,650.00 for lawn maintenance. During the hearing the Tenant stated that they were seeking \$1,440.00 for lawn maintenance completed by them over the course of the tenancy for which they did not feel responsible. They also mentioned several times that they have asthma which was aggravated by the completion of lawn maintenance. The Landlord stated that it is generally a tenant's responsibility to maintain the lawn and complete general lawn maintenance for a single family home and stated that this was covered by the tenancy agreements. They also argued that other occupants completed lawn maintenance as well, not just the Tenant. As a result, the Landlord disagreed that the Tenant is entitled to any compensation for any lawn maintenance completed.

The Tenant also sought recovery of utilities they believe were overpaid by them or were collected from them on behalf of the Landlord for a property other than the rental unit. During the hearing the Tenant stated that they are seeking \$1,163.85 in overpaid utilities. Although the Application itself does not, in my opinion, clearly break down the Tenant's monetary claim either in this regard or in general, it appears to me from the Application and the documentary evidence before me from the Tenant, that they are seeking the return of \$750.00 paid for internet and \$1,447.18 of other utilities either overpaid by them or paid by them for a property other than the rental unit. The Tenant submitted copies of numerous utility bills and self-authored breakdowns of costs sought, in support of their claims.

The Agent and Landlord stated that the Tenant did not submit receipts for the utility payments they say they overpaid or were wrongfully charged and denied charging the Tenant for utilities incurred at another property. The Agent stated that the Tenant was charged for utilities in accordance with the tenancy agreements and therefore no utility overpayments occurred.

The Tenant sought \$600.00 in compensation for items loaned to other occupants of the property by them and either damaged or not returned, such as a wifi box (\$50.00), a mattress (\$500.00), and a bedside table (\$50.00). The Tenant argued that the Landlord is responsible for these costs as the occupants who damaged or failed to return these items were tenants of the Landlord, not their own roommates. The Agent and Landlord denied that they are responsible for these costs, as they stated that these occupants were in fact roommates of the Tenant.

Both parties submitted documentary evidence in support of their testimony, including but not limited to copies of tenancy agreements, amendments and addendums, handwritten receipts, some of which were illegible, copies of cheques, self-authored invoices and accountings of costs incurred, and copies of correspondence.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the Tenant bears the burden of proof to satisfy me that there was an unlawful rent increase and that they are entitled to the amounts claimed.

First, I will deal with the Tenants claim for \$1,800.00 in overpaid rent and their dispute of a rent increase. The details of the numerous tenancy agreements and arrangements entered into between the parties was largely unclear to me both from the testimony provided in the hearing and the documentary evidence before me for review. Although copies of numerous tenancy agreements were submitted by the parties for my review, several contained undated amendments or were incomplete, and several contained conflicting information, stating both that the Tenant owed the full amount of rent shown but also containing breakdowns showing only a portion of the rent owed by the Tenant and the other portion owed by other persons. The parties themselves also seemed confused during the hearing regarding how and when the tenancy agreements changed, and the Agent even described the tenancy arrangement as confusing. Further to this, the parties submitted rent receipts showing that the Tenant paid rent both in the full amount shown on the tenancy agreements, and in lesser amounts.

Despite the above confusion, it is clear to me that the tenants and occupants changed between tenancy agreements. While the Tenant was always listed as a tenant, other tenants and occupants were added and removed between agreements.

As stated above, the Tenant has the onus in this matter to satisfy me of their claims on a balance of probabilities. As I cannot be satisfied based on the testimony of the parties in the hearing and the documents before me for review what the terms of the tenancy agreements were over the course of the tenancy, with any degree of certainty, I find that I likewise cannot be satisfied that there was an unlawful rent increase as asserted by the Tenant or that they are entitled to any compensation for overpaid rent. Further to this, even if I had been satisfied that the rent was increased between tenancy agreements by an amount greater than the Act ordinarily allows for routine rent

increases, Policy Guideline 30 only restricts or places conditions on rent increases between tenancy agreements where the tenants are the same. As I am satisfied that the tenants named in the tenancy agreements changed between each agreement, I therefore find that it would have been open to the parties to change the terms of the tenancy agreement, including the amount of rent payable. As a result, I dismiss the Tenant's claim disputing a rent increase and seeking compensation for overpaid rent without leave to reapply.

The Tenant sought recovery of \$3,650.00 for lawn maintenance. However, as stated above, the terms of the numerous tenancy agreements between the parties remains unclear to me, including any terms relating to lawn maintenance. However, Policy Guideline 1 states that generally tenants who live in a single-family dwelling are responsible for routine yard maintenance, which includes cutting grass, and clearing snow. Based on Policy Guideline 1 and my uncertainty regarding the terms of the tenancy agreements themselves, including which portion of the single family home was rented to the Tenant, I therefore dismiss the Tenant's claim for compensation for yard maintenance without leave to reapply.

Having made this finding, I will now turn my mind to the Tenant's claim for the reimbursement of utilities. Although the Tenant claimed to have paid utilities for a different service address than the rental unit, and submitted copies of utility bills in the name of the Agent for a different service address, no proof of payment was submitted for these bills and the Landlord and Agent denied that the Tenant had been charged utilities at a different address. The Tenant also sought reimbursement for 40% of utilities paid between 2019-2020 and \$750 for cable/internet, however, the basis of this portion of their claim remains unclear to me and as stated above, the terms of tenancy agreements are also unclear. As a result, I find that the Tenant has failed to satisfy me on a balance of probabilities that they paid for utilities at a different address or that they are entitled to the return of \$750 in cable/internet costs or utilities paid between 2019 - 2020 and I therefore dismiss this portion of their claim without leave to reapply.

Finally, the Tenant sought compensation for items loaned to other occupants of the property and either damaged or not returned, such as a wifi box, mattress, and bedside table. The Act does not convey authority to deal with matters between roommates, co-tenants, or tenants sharing common space, as set out in section D of Policy Guideline 13. Regardless of whether the occupants who damaged or failed to return items belonging to the Tenant were tenants or the Landlord or roommates of the Tenant under their own tenancy agreement, I find that I have no authority to deal with a claim between tenants or occupants. I therefore dismiss this portion of the Tenants claim for lack of

jurisdiction. The Tenant may wish to seek independent legal advice on how to pursue those claims, should they wish to do so.

As the Tenant was unsuccessful in their Application, I also decline to grant them recovery of the \$100.00 filing fee.

Conclusion

The Tenant's Application is dismissed 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 Act.

Although this decision has been rendered more than 30 days after the conclusion of the proceeding, contrary to section 77(1)(d) of the Act, 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).

Dated: November 13, 2020

Residential Tenancy Branch