Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $12,200.00 for damage or compensation under the Act; and to recover their $100.00 Application filing fee.

The Tenants, M.F. and J.F., appeared at the first teleconference hearing; however, no one attended on behalf of the Landlord. The Tenants said they had not received any notice of hearing information from the Residential Tenancy Branch ("RTB"), "until a week or two prior to the hearing, when someone from the RTB" emailed them to enquire about the need for the hearing. The Tenants said that the RTB representative indicated that they would send the Notice of Hearing documents to the Landlord. I find that this must have been a miscommunication on the representative's part, as it is an applicant's responsibility to serve the respondent(s). Due to apparent miscommunication, I determined that it would make the most sense to adjourn the hearing, so that the Tenants could serve the Landlord with the Notice of Hearing documents they received from the RTB along with their evidence and this Interim Decision.

The Tenants, M.F. and J.F., and the Landlord, R.B., attended the reconvened hearing and gave affirmed testimony. R.B. is the son of the Tenant's initial Landlord, N.B.; however, as the Landlord's health has failed, R.B. has taken over as the primary Landlord contact for this tenancy.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute

Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided their email address in the Application and they confirmed this in the hearing. The Landlord provided his email address in the reconvened hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2015, with an initial rent of $800.00 and a final monthly rent of $1,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $400.00, and no pet damage deposit. They agreed that the Landlord returned the security deposit to the Tenants in full at the end of the tenancy. The Parties agreed that the Tenants vacated the rental unit on February 28, 2022. They said they provided their forwarding address to the Landlord with this Application process.

In their Application, the Tenants explained their claim, as follows:

> We were in the unit for just over 6 years. In those years our landlord would tell us rent was being raised. There was never one written notice or 3 months given. This means rent should have stayed at $800 which was the amount we were paying when we moved in. . . .
>
> This is the total amount over charged illegally in rent over the 6 years. He kept

> raising rent whenever he seen fit and no written notice was ever given. I told him each year he was only allowed to raise it a certain amount with written notice. Even getting our receipts for rent was sometimes a fight.

The Tenants also commented on other matters, which I find were unrelated to the claims made in the Application; therefore, I did not consider that testimony.

In the hearing, I asked the Tenants to explain how they arrived at the amount claimed, and they said:

> I took all the receipts, found all the months that we had rent increases, and I took what should have been paid for the amount of time, because there was no written notice, and I calculated what we have paid and should have paid, because we didn't receive any written notice. The total is $12,200.00. And if we had received proper notice with proper increases, we still would have paid $6,209.18 by the time we had left. But this was well over the legal rent increases allowed. But we received no written notice, only verbal. The first time he said it'd be $50.00, and we said that's too much, so we'll just do $25.00, and then he raised it again the next month.

The Tenant then listed the amounts they say their rent rose to each year, which they assert is over the legally allowable rate. They said it started in June 2018 and that the Landlord had told them about the increase a month prior. They say they went from paying $800.00 starting in 2015 to:

> June 2018 → $825.00
> July 2018 → $850.00
> June 2019 → $900.00
> October 2020 → $950.00
> February 2022 → $1,000.00

The Tenant said about these calculations: "It's been a few years."

However, the Tenants failed to provide their calculations for how this equals $12,200.00 in illegal rent payments.

The Landlord responded:

> The dates and times correct, but the facts are skewed. I did upload documents.

> They were done three months prior to the increase verbally. [My father] asked if they needed anything in writing, but they declined. He thought his verbal notice three months ahead was sufficient notice.

The Tenants said:

> We were never given three months; verbal notice - a month or two at most. We would have definitely taken writing if we could.

The Landlord said: "[My father] asked [J.F.] specifically. They made no other applications to the RTB in regard to rent increases during tenancy."

The Tenants responded:

> When told about rent increases, I said this isn't the legal amount allowed. The first time it was $32.00 and he said we'll just get other tenants. We were stuck. You had no choice to uproot the whole family and I have two autistic kids. We didn't want tension and to lose our home and we were told that we would.

The Landlord said:

> They applied for no other dispute resolution. – nothing was ever filed with the RTB. And it's hearsay. There was nothing to share regarding; [my father's] not going to make threats or kick every one out. There's stuff made up here.

The Parties then discussed matters that were not raised in the Application, and which I find are irrelevant to my considerations.

The Tenants submitted copies of their rent payment receipts, but no calculations as to how they arrived at their claimed amount.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

It is clear from the evidence before me that the Tenants expected me to do the calculations of the total amount of rent they paid, and how much of it was due to illegal rent increases, even though the Landlord would not have access to this calculation prior

to the hearing.

Rule 2.5 states:

> **2.5 Documents that must be submitted with an Application for Dispute Resolution**
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> To the extent possible, the applicant must submit the following documents at the same time as the application is submitted:
>
> - a detailed calculation of any monetary claim being made;
>
> . . .
>
> - copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

I find that the Tenants' Application fails, because they did not provide sufficient evidence pursuant to Rule 2.5 to support their claim. As a result, the Tenants' Application is dismissed wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application, as they failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenants' Application is dismissed wholly 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 *Residential Tenancy Act*.

Dated: March 1, 2023

Residential Tenancy Branch