



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing convened as a result of a Tenant's Application, file don August 31, 2022, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$14,770.00 including compensation for an overpayment of rent, 12 months' rent pursuant to section 51(2) of the *Residential Tenancy Act*, and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on May 29, 2023. Only the Tenant, S.L., also known as T.L., called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:54 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant testified that he personally served the Landlord with the Notice of Hearing and the Application on September 17, 2022. A video recording of the service was provided in evidence before me. The Tenant testified that the Landlord confirmed service by text to the Tenant.

I accept the Tenant's testimony and evidence in this regard and find the Landlord was duly served as of September 17, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that this tenancy began October 15, 2023. Monthly rent was initially \$700.00, but was raised to \$860.00 during the tenancy. The tenancy ended on August 31, 2022.

In the claim before me the Tenants sought the sum of \$4,284.00 for rent paid over and above the allowable amount. In support of this claim the Tenant testified as follows.

- The rent was originally \$700.00. In 2016 the rent was raised by \$50.00 which was increase of 7.1% when the allowable amount was only 2.9%. From April 1, 2016 to April 1, 2018 the Tenants paid the increased rent such that the Tenants paid **\$742.50** more than they should have.
- During the time period May 1, 2018 – December 1, 2019 the rent was increased by another \$50.00 This was an increase of 6.7% when it was supposed to be only 4%. The Tenants paid **\$1,017.76** more than they should have.
- The rent was then raised another \$50.00 per month on January 1, 2020 to July 1, 2022. This was an increase of 6.3% when the allowable amount was 2.6% in 2020. The Tenants paid **\$2,523.74** more than they should have during that time.

The Tenant confirmed that the total amount of rent they paid over and above the allowable amount is **\$4,284.00**. He further confirmed they were not aware the Landlord was raising rent more than the allowable amount and requested reimbursement of these

amounts paid. The Tenant stated that they had recently moved to Canada and didn't understand English or the law. The Tenant was only 10 years old at the time and feels that the Landlord took advantage of them.

In terms of their claim for compensation pursuant to section 51(2) of the *Act*. The Tenant stated that the Landlord issued the Notice on February 4, 2022. The reasons cited on the Notice were that the Landlord's child was going to move into the rental property.

The Tenant testified that he did not have any evidence to support a finding that the Landlord's child did not occupy the rental unit, rather he merely suspected the Landlord did not have his child move in. He stated that he was not able to go to the rental property and as such he was not able to provide any evidence to show that the property was not used for the stated purpose.

Analysis

After considering the Tenants' undisputed testimony and evidence and on a balance of probabilities I find as follows.

Rent may only be increased in accordance with the *Act*.

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.

(4)[Repealed 2006-35-66.]

(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.

In this case I accept the Tenant's undisputed testimony and evidence and find the Landlord increased rent over the allowable amounts. I accept the Tenants' calculations as to the amount of the overpayment and therefore, pursuant to section 43(5) I award the Tenants' recovery of the **\$4,284.00** over payment.

The Tenants also claim compensation pursuant to section 51(2) of the *Act*. This section allows a Tenant to recover the equivalent of 12 months' rent if the receive a 2 Month Notice for Landlord's Use and the Landlord does not use the rental property for the stated purpose.

In the case before me the Tenants received such a notice and the reasons for issuing the notice were that the Landlord's child would reside in the rental unit. The Tenants allege that the Landlord did not use the property for the stated purpose; however, the Tenant conceded that he did not have any evidence of this, merely that he suspected the Landlord did not use the property for that purpose.

While the Landlord did not attend the hearing and as such the claims were unopposed, I find the Tenants submitted insufficient evidence to support a finding that the rental unit was not used for the stated purpose. Such evidence could include advertisements for re-renting the unit, statements from neighbours as to their observations as to who lived in the unit, a rental contract with a new tenant, or proof the property was sold. The only evidence I had was the Tenant's testimony that he suspected the Landlord's child did not reside in the property. I therefore dismiss this portion of the Tenants' claim.

Having been partially successful in their Application I award the Tenants recovery of the \$100.00 filing fee for a total award of **\$4,384.00**. The Tenants are granted a Monetary Order for this amount and must serve the Order on the Landlord. Should the Landlord fail to pay the Tenants may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenants' claim for monetary compensation is granted in part. They are entitled to compensation for rent paid over the allowable amount and recovery of the filing fee. Their claim for 12 months' rent 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 *Residential Tenancy Act*.

Dated: June 28, 2023

Residential Tenancy Branch