



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNER, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to be reimbursed for the cost of emergency repairs. Despite being served by registered mail sent on July 21, 2008, the respondent landlord did not appear.

Preliminary Issue

The tenant had also submitted an amendment to the tenant's original application to add a claim against the landlord for return of the security deposit and seeking a monetary order for the equivalent of one month's rent compensation under section 51 of the Act. However, according to the testimony of the applicant, due to misinformation from the Residential Tenancy Branch, the amendment was not properly served on the landlord/respondent. Therefore, I make no findings on the security deposit nor the compensation pursuant to section 51 and these claims, specific to the amended application, are dismissed with leave to reapply.

Issue(s) to be Decided

The tenant was seeking a Monetary Order for a rent increase imposed without proper notification and in excess of that permitted under the Residential Tenancy Regulation, (the Regulation) and compensation for expenditures incurred by the tenant in regard to an emergency repair to secure the structure after it was hit by a vehicle.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord had issued a notice that contravened Part 3 of the Act and Part 4 of the Regulation.
- Whether the landlord had collected additional rent from the tenant pursuant to a notice that did not comply with the Act or Regulation.
- Whether the tenant is entitled to be reimbursed for emergency repairs on the structure after damage by a vehicle.

Background and Evidence

The tenant submitted into evidence a copy of a letter from the landlord dated October 28, 2007 purporting to be a notice to increase the rent by 5%, a copy of a written statement chronicling a car accident that occurred in November 2007 during which the structure was hit and damaged.

The tenant testified that the landlord imposed a five percent rent increase raising the rent from \$800.00 per month to \$840.00 per month starting in December 2007. The tenant testified that the higher rent was paid until the end of July 2008. The tenant is claiming \$40.00 for each month up to and including the month of June 2008 totaling \$280.00 in overpaid rent, for which the tenant is claiming reimbursement.

In regards to the emergency measures taken by the tenant to secure the building after it was struck by a vehicle, the tenant is claiming \$46.74 in costs.

Analysis

The Act governs when, how and how much a Landlord may increase the rent. Section 42 (2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) states that a notice of a rent increase must be in the approved form.

In this instance, the rent was increased unilaterally and not in compliance with the Act in the rate, amount of notice nor form. When illegal rent is charged, section 43(5) of the Act provides the following remedy:

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.

Accordingly, I find that the notice of rent increase issued by the landlord in the form of a letter dated October 28, 2007, was of no force under the Act nor Regulation and that the tenant is entitled to be reimbursed all rent paid in excess of \$800.00, per month amounting to \$280.00.

In regards to the tenant's claim for reimbursement for the emergency costs to secure the structure after the vehicle impact, I find on a balance of probabilities that the \$46.74 being claimed is justified and the tenant is entitled to be compensated in this amount.

Conclusion

Based on the testimony and evidence, I find that the tenant has established a total monetary claim of \$376.74 comprised of \$280.00 compensation for rent overpayment, \$46.74 reimbursement for emergency repairs and the \$50.00 fee paid by the tenant for this application. I hereby grant an order in favour of the tenant for \$376.74. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

DATE
