



Dispute Resolution Services

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

Decision

Dispute Codes: CNR DRI MNDC FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss under *Residential Tenancy Act (Act)*; to dispute a rent increase; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether the Landlord increased the rent in accordance with the *Act*; whether the Tenant is entitled to a monetary Order for compensation or money owed or damage or loss; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2005. At the beginning of the hearing the Tenant stated that he was still residing in the rental unit, however later in the hearing he stated that he had vacated the rental unit on November 26, 2008, and that it was currently clean and empty.

The parties agree that the Tenant was required to pay monthly rent prior to April of 2008. The parties agree that the Landlord placed a Notice of Rent Increase in the Tenant's mail slot on January 21, 2008. This Notice advised the Tenant that his rent would be increase from \$900.00 to \$975.00, effective April 01, 2008.

The Landlord and the Tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was served on the Tenant on November 10, 2008, which indicated that the Tenant was required to vacate the rental unit on November 20, 2008. The evidence shows that the Tenant disputed the Notice to End Tenancy on November 12, 2008.

The Tenant stated that he determined that the rent increase imposed on April 01, 2008 was illegal, and that he determined his rent should have only increased to \$933.30 per month. Based on his calculations, the Tenant determined that he overpaid his rent in April, May, June, July, August, September and October by \$41.70 per month, which is a

total of \$291.90. He stated that he deducted the overpayment of \$291.90 from his rent of \$933.30 which he calculated was due for November of 2008, and that he paid the remaining \$608.10 rent that was due. He stated that he deposited the \$608.10 directly into the Landlord's bank account, which is how he normally pays his rent.

The Landlord stated that she was not aware that the Tenant had deposited \$608.10 into her bank account. She accessed her bank account electronically and confirmed that the Tenant had deposited \$608.10.

Analysis

Section 43(1)(a) of the *Act* stipulates that a Landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. The regulations stipulate that a Landlord may not increase the rent in 2008 by more than 3.7%. In the circumstances before me, I find that the rent increase imposed by the Landlord did not comply with the regulation, as it was an increase of 8.3%.

Section 41 of the *Act* stipulates that a landlord may only increase rent in accordance with the *Act*. As the increase imposed on April 01, 2008 did not comply with the *Act*, I find that the Landlord was not entitled to collect a rent increase in any amount. On this basis, I determine that the Tenant's monthly rent should have remained at \$900.00.

The evidence shows that the Tenant paid monthly rent in the amount of \$975.00 for the months of April, May, June, July, August, September, and October of 2008, which represents an overpayment of \$525.00. The evidence shows that he paid monthly rent in the amount of \$933.30 for November of 2008, which represents an overpayment of \$33.30. In total, I find the Tenant overpaid his rent in the amount of \$558.30.

Section 43(5) of the *Act* stipulates that when a landlord collects a rent increase that

does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. I find that the Tenant was entitled to deduct \$325.20 from his rent payment for November of 2008, pursuant to section 43(5) of the *Act*.

As the Tenant had a right under the Act to deduct \$558.30 from his monthly rent payment for November of 2008, I hereby set aside the Notice to End Tenancy that was served on him for non-payment of rent for November of 2008. In reaching this conclusion, I note that the Tenant did pay rent, in the amount of \$608.10 for November, although he was only required to pay rent in the amount of \$341.70.

Based on these determinations, I find that the Landlord still owes the Tenant \$266.40 in compensation for the illegal rent increase that was imposed.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$316.40, which is comprised on \$266.40 in a rent overpayment and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount of \$316.40. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 02, 2008