



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

DRI, CNR, OPR, MNR, FF

Introduction

This reconvened hearing was held as a continuation of the conference call hearing held on August 6, 2009. The parties were reminded that they continue under oath.

Preliminary Matter

The landlord's name has been amended to reflect the Receiver's correct title. A copy of the amended interim decision issued on August 10, 2009 is enclosed with this decision.

The tenant and tenant's advocate did not attend this reconvened hearing.

The landlord testified that the tenancy has ended, that the tenant provided proper notice and moved out August 31, 2009.

Issue(s) to be Decided

Has the landlord imposed an illegal rent increase?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the August 6, 2009 hearing the parties agreed that a sworn affidavit would be sought from the previous property manager. This was to occur with both parties present and was to be at no cost. The landlord testified that, despite phone calls and a facsimile message sent to the tenant's advocate on August 24, the tenant did not contact them to participate in the process of obtaining the statement.

The landlord submitted an August 28, 2009 statutory declaration from the previous property manager who declared that "I advised each and every tenant of WWWWVP that during the months of July and August, 2009 the rents would be \$800.00 including electricity." The tenant's normal monthly rent was \$425.00 per month.

The landlord has submitted that the \$632.35 legal fee incurred in obtaining the statement should be recovered from the tenant.

The landlord testified that the tenant has paid her rent in full but that she has failed to pay the increase portion of rent for July and August 2009 in the sum of \$375.00 per month. The landlord is claiming compensation in the sum of \$750.00 in unpaid rent for July and August, 2009.

Analysis

Section 36 of the Act provides:

- (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.**
- (emphasis added)

There is no evidence before me that the tenant agreed, in writing, to a rent increase of \$375.00 per month for the months of July and August. Despite any verbal agreement that the parties may have had, a tenant must agree, in writing, to a rent increase unless the landlord is imposing the increase as allowed under section 36(1)(a) or 36(1)(b.) The previous property manager's statement does not provide any evidence that written tenancy agreements or agreements to increase rent were ever signed between the parties.

As the rent increase was not provided or agreed to as required by the Act I find that the increase is illegal and that the tenant's rent remained at \$425.00 per month. Therefore, the landlord's claim for compensation for unpaid rent is dismissed without leave to reapply.

I will address the landlord's submission that the tenant must be held responsible for the legal fees incurred when the previous property manager's statement was provided. The landlord's Application for Dispute Resolution does not include a request for any costs or compensation, outside of unpaid rent. However; during the previous hearing the parties had made an agreement that this statement would be obtained, free-of-charge, from the tenant advocate's lawyer.

I accept that during the time arrangements were being made for the statement the landlord did not receive replies from enquires made to the tenant's advocate. The landlord testified that the tenant or her advocate did not contact him. However, I find that the landlord had a responsibility to inform the tenant and her advocate that any statement obtained by the landlord would incur costs; this did not occur.

Conclusion

I find that the landlord has imposed an illegal rent increase and that the tenant's rent remains at \$425.00 per month. The tenant has now moved out of the rental unit and owes the landlord no further rent.

The landlord's claim for compensation for unpaid rent is dismissed without leave to reapply.

The Notice to End Tenancy issued on June 26, 2009 has been cancelled.

As the landlord's Application is without merit I dismiss the request for filing fee costs.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9(1)(1) of the *Manufactured Home Park Tenancy Act*.

Dated September 25, 2009.

Dispute Resolution Officer