

DECISION

Dispute Codes: DRI and MNDC

Introduction

This application was brought by the tenants seeking a Monetary Order to recover over payment of rent consequent to an improperly imposed rent increase.

Despite having been served with the Notice of Hearing sent by registered mail on September 2, 2009, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, the hearing proceeded in his absence.

Issues to be Decided

This matter requires a decision on whether the landlord imposed an improper rent increase and, if so, whether the tenants are entitled to a Monetary Order for return of the overpayment and in what amount.

Background and Evidence

This tenancy began on June 1, 2000 and ended on August 31, 2009 pursuant to a Notice to End Tenancy for landlord use. Rent had been \$1,000 per month prior to January 1, 2008 when it was raised to \$1,100, the increase which is the subject of this dispute.

During the hearing, the tenant gave evidence that, on January 1, 2008, the landlord came to pick up the rent which was then \$1,000 per month, and informed the tenant verbally that she would have to add \$100 per month from that time forward.

The tenant stated that the landlord did not give notice in advance and never did give notice on the prescribed form. She was unaware at the time of the requirements pertaining to rent increases in the *Act*, believed she had to pay the increase and did so until shortly before the end of the tenancy. The tenant submitted copies of her rent cheques from January 1, 2008 for \$1,100 reflecting the increase.

Therefore, the tenants claim return of the increased amount from January 2008 to June 2009 inclusive. There was no rent due for August 2009 under the provisions of the notice for landlord use, and the parties had balanced accounts on repairs done by tenants for the July rent.

Analysis

Part 3 of the *Residential Tenancy Act*, (sections 40 to 43), prescribes the requirements for the frequency, limit and service of notice of a rent increase. In summary, it states that:

1. A rent increase may be imposed only once per year;
2. The landlord must give notice at least three months in advance of the effective date of the increase in the approved form, and;

3. The amount of the increase must conform with the limit prescribed by *Regulation* which was 3.7 percent at the material time.

Section 43(5) of the *Act* provides that, "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 matter, I find that the landlord imposed a \$100 per month rent increase in breach of sections 42(2) and 42(3) of the *Act* by failing to provide the tenants with three month notice on the prescribed form. The increase also breached section 43 of the *Act* by raising the rent by an amount that exceeded the 3.7 per cent limit set by regulation.

Therefore, I find that the rent increase of January 1, 2008 did not comply with Part 3 of the *Act* and tenants are entitled to recover the improper rent increase of \$100 per month for the 18 months from January 2008 to June 2009 inclusive for a total of \$1,800.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,800.00 for service on the landlord.