



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, ERP, RP, MNDC, FF

Introduction

This hearing was convened upon the application of the tenants seeking:

1. To dispute a rent increase;
2. A monetary order for compensation for damage or loss;
3. An Order that the landlord make emergency repairs;
4. An Order restricting the landlord's right of entry; and
5. Recovery of the filing fee.

Both parties appeared at the date and time of the hearing and gave evidence under oath.

Background and Evidence

The tenants say that the landlord levied an improper rent increase in January of 2009 in the sum of \$200.00. The tenants paid this additional sum for the months of January to November 2009 inclusive because they did not understand that the landlord could not raise their rent this much. The tenants would now like to recover the rental overpayment of \$200.00 per month for 11 month equalling \$2,200.00.

The tenants are also seeking an order that the landlord make repairs to the ceiling. Further, the tenants ask that the landlord or his contractors not attempt to make repairs or otherwise enter the premises when the family is inconvenienced such as during their

lunch time. The tenants insist that the landlord provide notice as required by the Act for each showing.

The landlord says the rental unit was originally rent to JRVM for the sum of \$2,000.00 per month. The landlord says the tenant's son, JRVA and his family also moved into the rental unit. The landlord said he pointed out to the tenant that he had only rented the unit to him alone and the four extra people in the rental unit caused additional expense such as the costs for water. The landlord testified that he told the tenant that an additional \$200.00 would be necessary to off-set the additional costs such as water, with so many people in the rental unit. The landlord advised that the rent would be \$2,200.00 effective January 1, 2009. The landlord testified that the tenant's agreement with this increase is apparent because the tenants paid the rent increase from January 1, 2009 until November 1, 2009. Then, in December 2009, the tenants reduced the rent back down to \$2,000.00 saying they now realized the law did not allow such an increase.

The landlord testified that he attempts to make arrangements with the tenants to make repairs but when his contractor arrives the contractor is either turned away or asked to leave half way through the job. Further, the landlord is attempting to sell the rental unit and has made a standing arrangement with the tenants to show the rental unit on Wednesday afternoons. The landlord testified that he has not always shown the rental unit at that agreed time but he made this agreed arrangement with the tenants in the hope that this would be less inconvenient to them than simply providing 24 hours written notice for each showing.

Findings

With respect to the rent increase, Section 43 of the Act stipulates the amount of the 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,
- or,
- (c) agreed to by the tenant in writing.

(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.

I am mindful that the tenants have waited almost 11 months to dispute the increase and having paid the increase over the past 11 months it may be construed that they agreed with the increase, the Act is clear that an increase other than that calculated in accordance with the regulations for which proper written notice has been given, must be agreed to in writing by the tenants. There is no evidence that the rent increase imposed was agreed to in writing by the tenants. I therefore find that the increase does not comply with the Act and the landlord must return the additional sum paid by the tenants that is the sum of \$2,200.00.

I find that the tenants have failed in their burden of proving that the landlord is not making repairs as required by the Act. Based on the evidence of both parties, I find that the tenants are thwarting the landlord's attempts to make or complete repairs during times the tenants believe the family should be left alone, such as at lunchtime. There has been no evidence submitted that the landlord and/or his contractors are attempting to enter the rental unit to make repairs during anything other than normal business hours and I find this to be reasonable. I therefore dismiss the tenant's claims for repairs as I find the landlord is not in non-compliance with the Act in this regard.

Further, I find that the tenants have produced insufficient evidence to support a finding that the landlord is abusing his right of entry such that it should be curtailed. I therefore decline to make an Order restricting the landlord's right of entry.

Having been partially successful in this claim I will also award the tenants a monetary order in the sum of \$25.00 as partial recovery of their filing fee.

Conclusion

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.