

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Did the landlord illegally increase the rent?

Is the tenant entitled to recover any rental overpayment?

Background and Evidence

The parties agreed that the tenancy began in May 1, 2006. The tenancy was set to run for a fixed term of one year, ending on April 30, 2007. The tenancy agreement does not address what was to happen at the end of the fixed term, whether the tenancy would continue as a month to month tenancy or the tenant was required to vacate. Rent was initially set at \$800.00 per month.

The tenant testified that just before September 2007 the landlord approached him and verbally advised that on September 1, 2007 the rent would increase by \$50.00 to \$850.00 per month, an increase of approximately 5.9%. The tenant testified that the landlord told him that since the fixed term had expired, he either had to move out or agree to a new rental rate. The tenant verbally agreed to pay \$850.00 per month beginning in September 2007 and continued to pay this amount through September 2008. The tenant testified that in September 2008 the landlord again approached him and advised that effective October 1, 2008 the rent would be increased to \$900.00 per month. The tenant verbally agreed to pay \$900.00 per month beginning in October 2008. The tenant testified that in August 2009 the landlord again approached him and advised that effective September 2009 the rent would be increased to \$950.00 per

month. The tenant at that point researched the limits the Act placed on rent increases and advised the landlord that he could not raise the rent by \$50.00. The tenant continued paying \$900.00 per month until he vacated the rental unit on March 1, 2010. The tenant maintained that the only reason he agreed to a rental increase was because the landlord had told him that the increase was legal. The tenant submitted a record of transactions from his chequing account which show that at the beginning of each month from June – August 2007 inclusive he wrote a cheque for \$800.00, that at the beginning of each month from September 2007 – September 2008 inclusive he wrote a cheque for \$850.00 and that at the beginning of each month from October 2008 – November 2008 inclusive he wrote a cheque for \$900.00. The tenant testified that all of the rent increases were verbal and that he had never received a rent increase on the form required by the Act.

The landlord testified that because the tenancy was set for a fixed term of one year, he was free to renegotiate a new rental rate at the end of the fixed term. The landlord testified that he did not have the documents relating to the tenancy in front of him, but to the best of his recollection, in May 2007 he negotiated with the tenant and they verbally agreed that the rent would be increased to \$840.00 per month, which he claims the tenant paid through April 2008. The landlord testified that he then increased the rent effective May 2008 by \$31.08, which is 3.7%, and the tenant paid \$871.08 each month through April 2009. In May 2009 the landlord claimed that the tenant agreed to a further rent increase of 3.7% and paid \$930.31 for the remainder of the tenancy. When asked why he accepted cheques from the tenant for \$850.00 each month from September 2007 – August 2008 inclusive and why he accepted cheques for \$900.00 each month from October 2008 – November 2009 inclusive, the landlord had no explanation.

Analysis

Residential Tenancy Policy Guideline #30 provides as follows.

The [fixed term] agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month tenancy.

I find that because the tenancy agreement was silent as to what happened at the end of the fixed term, the tenancy was to continue on a month to month basis after April 30, 2007. I find that the landlord could not impose a new rental rate, but was bound by the rent increase formula provided in the Residential Tenancy Regulation which was 4% for 2007. I accept the tenant's version of events as relates to the rental increases as they are supported by his bank statements and the landlord has no explanation as to why he would have accepted additional monies each month. The bank records show that the tenant did not start paying an increased rent until September 2007, some 5 months after the end of the fixed term, which further supports the argument that the tenancy continued on a month to month basis.

I find that the landlord illegally raised the rent in September 2007 as he did not issue the tenant a notice of rent increase in the prescribed form and he raised the rent by more than 4%. The tenant seeks an award for the difference between the amount by which the landlord could legally have raised the rent and the amount he actually raised it. While a different formula could have been used to determine the tenant's entitlement, the tenant is limited to the amount claimed. In 2007 the landlord was entitled to raise the rent by 4% which would have been a \$32.00 increase. The landlord increased the rent \$18.00 more than he was legally entitled to. The tenant seeks to recover \$16.67 per month for the period from September 2007 – August 2008 inclusive. I find that the tenant is entitled to recover the \$16.67 per month he claimed and I award the tenant \$200.04 which represents 12 months of overpayment for that period. In 2008 the landlord was entitled to raise the rent by 3.7%. By the time the second rent increase was implemented in October 2008, the landlord should have been collecting only \$832.00 per month which means after the 3.7% increase was applied the landlord should have collected an additional \$30.78 per month for a total of \$862.78 per month.

Instead, the landlord was collecting \$900.00 per month, requiring the tenant to pay \$37.22 more per month than he would have been legally required to pay had the landlord complied with the law with respect to rent increases. The tenant seeks to recover \$34.65 of the overpayment for a twelve month period. I find that the tenant is entitled to recover this overpayment and I award the tenant \$415.80 which represents 12 months of overpayment. The tenant is also entitled to recover the filing fee paid to bring his application and I award the tenant \$50.00.

Conclusion

I grant the tenant a monetary order under section 67 for \$665.84 which represents \$200.04 for the period from September 2007 – August 2008 inclusive, \$425.80 for the period from October 2008 – September 2009 inclusive and the \$50.00 filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: April 29, 2010
