

DECISION

Dispute Codes MNDC OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to obtain an Order to have the Landlord comply with the Act. The Tenant noted in the description of her dispute that she was also disputing an illegal rent increase.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 10, 2010. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 67, 42, and 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on May 1, 2001. The rent was increased to \$591.00 effective March 1, 2009, and is payable on the first of each month. The Tenant paid a security deposit of \$257.50 on April 24, 2001.

The Tenant testified that she received a call from the Landlord near the end of November 2009 requesting to see her. The Tenant argued that she became anxious because she had no warning that the Landlord wanted to see her and the Landlord did not tell her what the meeting was about. The Tenant stated that the Landlord came and discussed the Landlord's need to increase the Tenant's rent and that the Landlord brought rent increase papers and they discussed how the Landlord has taken two years to do this increase. The Tenant stated that she had never seen these types of papers before and that the Landlord asked her what she thought about this. The Tenant said she was quiet and made no comments. The Tenant confirmed the Landlord left a copy of the documents with her and the Landlord told the Tenant that she expected the Landlord's copy returned. The Tenant claimed that she never signed a copy of this document and did not return anything to the Landlord because the Landlord only left her one copy.

The Tenant testified that she pays her rent by cheque and that she delivers the payment into the secure mailbox each month. The Tenant confirmed she paid the increased rent of \$637.00 for March 2010, April 2010, and May 2010, but that she only paid \$609.91 for June 2010 because she was told by the *Residential Tenancy Branch* that the legal amount of increase was only 3.2 %.

The Landlord testified that on November 13, 2009, she applied for an additional rent increased at which time learned that she could prevent having to attend a hearing if she entered into a written agreement with the Tenant for the increased rent. The Landlord stated that she withdrew her application the next day and proceeded to obtain the Tenant's written agreement. The Landlord stated that she then wrote a note to the Tenant to request a meeting and the Tenant called her on November 21, 2009 and agreed to meet with the Landlord that day. The Landlord stated that they met and discussed the rent increase, the Landlord explained all the documents to the Tenant, and left things with the Tenant to consider. The Landlord argued that they discussed afterwards and they came to a mutual agreement to step the increase in increments. The Landlord then prepared the agreement and left the documents posted to the

Tenant's door on November 27, 2009, along with a post-it note explaining what to do to finalize the documents.

The Landlord confirmed the Tenant's statement that her rent is payable monthly, by cheque, and placed in the black mailbox. The Landlord testified that she received the Tenant's December 1, 2009 rent cheque which was attached to the signed agreement for the rent increase. The Landlord also confirmed the amounts paid by the Tenant for March, April, May and June 2010. The Landlord stated that there were no conversations between herself or the Tenant between November 21, 2009 and May 1, 2009 and that the March, April and May, 2010 rents were provided in the amount with the agreed upon increase. The Landlord argued that she heard nothing from the Tenant until May 5, 2010 at approximately 5:20 p.m., when the Tenant came to the Landlord's residence and told the Landlord that she could not increase the rent more than 3.2 %. It was during this conversation that the Tenant told the Landlord she had information from the *Residential Tenancy Branch* that the rent increase was illegal.

The Landlord stated that immediately following the Tenant's visit she issued a memo to the Tenant and hand delivered it to the Tenant on May 5, 2010 at 20:40 hours. The Landlord referred to her evidence, which included among other things a copy of the May 5, 2010 memo, a copy of a May 19, 2010 memo, a copy of the notice of rent increase dated November 27, 2009, and a copy of the signed agreement for the rent increase.

The Tenant argued that she has never received a memo from the Landlord and then dug through her papers and found the May 5, 2010 memo.

Analysis

After careful consideration of all the testimony and documentary evidence I have assessed the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me and I find that the Landlord and Tenant

entered into the written agreement dated November 27, 2009 for a rent increase which was to be applied in increments throughout 2010.

That being said, section 42 of the Act provides that a landlord must not impose a rent increase for at least 12 months after the tenant's rent has previously been increased. Therefore I find the agreement for rent increases to be applied throughout the year, as entered into by the Landlord and Tenant on November 27, 2009, to be void, as this agreement allows for the rent to be increased four times within a ten month period and contravenes section 42 of the Act as noted above.

Having found the written agreement for the rent increase to be void, the Notice of Rent Increase issued November 27, 2009 must stand on its own merit. The Notice of Rent Increase has been issued for a rent increase of \$46.00 which brings the current rent of \$591.00 to \$637.00, and is a 7.8% rent increase. Section 43 of the Act provides that a rent increase issued by a Landlord must be in accordance with the regulations which stipulate the allowable rent increase for 2010 as 3.2%. Based on the aforementioned I find the Notice of Rent Increase issued November 27, 2009 not to be in accordance with the Act and regulations and therefore I hereby cancel the Notice of Rent Increase dated November 27, 2009.

As the written agreement and the Notice of Rent Increase are of no force or effect the Tenant's rent remains at \$591.00 from March 1, 2009 onward. As per the aforementioned, I find the Tenant has overpaid her rent and is entitled to a monetary claim, in accordance with section 67 of the Act, as follows:

Payment March 2010 \$637.00 less rent owed of \$591.00	\$46.00
Payment April 2010 \$637.00 less rent owed of \$591.00	46.00
Payment May 2010 \$637.00 less rent owed of \$591.00	46.00
Payment June 2010 \$609.91 less rent owed of \$591.00	18.91
TOTAL AMOUNT DUE TO THE TENANT	\$156.91

Conclusion

Having found in favor of the Tenant's monetary claim the Tenant may deduct the one time amount of **\$156.91** from her July 1, 2010 rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 25, 2010.

Dispute Resolution Officer