



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes – DRI, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order cancel rent increases and a monetary order for return of an overpayment of rent based on the rent increases, pursuant to Sections 41, 42, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began prior to April 1, 2008 with the tenant residing in the rental unit prior to the current landlord's ownership of the unit, however, the tenant and the current landlord signed a new tenancy agreement on March 10, 2008.

The tenancy agreement signed on March 10, 2008 for a tenancy beginning on April 1, 2008 as a month to month tenancy with rent due on the 1st of each month and that acknowledging that a security deposit of \$200.00 had been paid in October 2006.

The amount of rent is outlined in an addendum of the tenancy agreement as follows:

Month	Rent Amount
April 2008	\$400.00
May and June 2008	\$450.00
July and August 2008	\$500.00
September, October, November, & December 2008	\$550.00
January 2009	To be negotiated - later date

Both parties agree the rent has not increased since September 2008.

The landlord testified that prior to signing the tenancy agreement the tenant agreed to the graduating scale structure of the rent she had informed the tenant of her plans to

renovate the rental unit and increase the rent. She further stated the parties discussed it back and forth until they came to the understanding outlined in the addendum. The tenant does not dispute the fact that he signed the agreement but rather that he did not know at the time the landlord was not allowed to increase the rent in the manner she did.

Analysis

Section 42 of the Act stipulates a landlord must not impose a rent increase for, among other things, at least 12 months after, if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement.

The section goes on to say that a landlord who is imposing a rent increase may do so by giving a notice to the tenant at least 3 months prior to the effective date and in the approved form.

Section 43 states that a landlord may impose a rent increase only up to the amount allowed in the regulations, ordered by the director (of the Residential Tenancy Branch) or agreed to by the tenant in writing.

As these parties entered into a new tenancy agreement effective April 1, 2008 when they signed the new tenancy agreement on March 10, 2008, effectively ending the previous tenancy, I find the tenant's rent was first established on April 1, 2008.

While Section 43 allows for rent increases that are in excess of the annual allowable rent increase if the tenant agrees in writing, there is no such provision under Section 42 regarding the timing of rent increases.

As a result, the rent increase imposed effective May 2008 is not compliant with Section 42 of the Act. The earliest allowable date for a rent increase would have been April 1, 2009. In order to be effective on that date the landlord would have to have provided the required 3 month notice of a rent increase in the approved form.

As the tenant was already paying the \$550.00 amount at that time no notice of rent increase compliant with Section 42 was issued by the landlord to the tenant. As the earliest possible rent increase allowed would have been on April 1, 2009 I find that all of the rent increases in 2008 are not compliant with Section 42.

Based on the above, I find the current rent of the rental unit to be \$400.00 per month. I also find the tenant is entitled to compensation for the overpayment of rent since May 2008 as described in the following table:

Month	Additional Rent	Total Overpayment
May and June 2008	\$50.00	\$100.00
July and August 2008	\$100.00	\$200.00
September – December 2008	\$150.00	\$600.00
All of 2009	\$150.00	\$1,800.00
January – November 2010	\$150.00	\$1,650.00
Total	-----	\$4,350.00

Conclusion

For the reasons noted above, I find the tenant is entitled to compensation in accordance with Section 67 of the Act and therefore grant a monetary order in the amount of \$4,350.00 for compensation as outlined above.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I also note that should the tenant receive this decision after paying his rent for the month of December 2010 and only if he has paid rent in the amount of \$550.00 I order that he may deduct the additional \$150.00 overpayment from a future rent payment, in accordance with Section 72(2)(a).

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: November 25, 2010.

Dispute Resolution Officer