



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: DRI, MNDC, FF

Introduction

This hearing dealt with the tenant's application to dispute an additional rent increase / a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on October 1, 2007 and continues to this day. A security deposit of \$375.00 was collected on September 1, 2007, and at the outset of tenancy the monthly rent was \$750.00.

The tenant testified that following the start of tenancy, rent was increased on three separate occasions in amounts beyond what is permitted by the Act, and in the absence of 3 full months' notice as required by the Act. Accordingly, the tenant seeks compensation for what he considers has been an overpayment in rent. The particulars of rent increases are as follows:

Date of notice of rent increase: September 1, 2008

Effective date of increase: December 1, 2008

Amount of increase: \$50.00 (\$750.00 to \$800.00)

Date of notice of rent increase: December 1, 2009

Effective date of increase: March 1, 2010

Amount of increase: \$30.00 (\$800.00 to \$830.00)

Date of notice of rent increase: December 1, 2010

Effective date of increase: March 1, 2011

Amount of increase: \$30.00 (\$830.00 to \$860.00)

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 42 of the Act addresses **Timing and notice of rent increases**, and provides in as follows:

42(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) 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;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Percentage increases in rent allowed pursuant to the Regulation during the time period relevant to this tenancy are as follows:

2008: 3.7% 2009: 3.7% 2010: 3.2% 2011: 2.3%

Section 43 of the Act addresses the **Amount of rent increase**, and provides in part:

43(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

Based on the documentary evidence and testimony of the parties, I find that the effective dates of the above increases were premature, as 3 full months' notice was not given in any of the 3 notices of a rent increase. As a result, this delayed the time when notice of a rent increase was able to lawfully take effect (not earlier than 12 months since the last rent increase). I further find that the amount of the rent increase in each case was in excess of the amount permitted by the legislation.

I find that the effective dates for the above rent increases, and the respective amount of rent increases permitted according to the Act and Regulation are as follows:

Date of notice of rent increase: September 1, 2008

Effective date of increase: **January 1, 2009**

Amount of increase: **\$27.75** (\$750.00 x 3.7%) (\$750.00 to **\$777.75**)

Date of notice of rent increase: December 1, 2009

Effective date of increase: **April 1, 2010**

Amount of increase: **\$24.88** (\$777.75 x 3.2%) (\$777.75 to **\$802.63**)

Date of notice of rent increase: December 1, 2010

Effective date of increase: **April 1, 2011**

Amount of increase: **\$18.46** (\$802.63 x 2.3%) (\$802.63 to **\$821.09**)

Actual amount of rent paid between December 1, 2008 and April 1, 2011: \$23,680.00

Lawful amount of rent for this period pursuant to the Act and Regulation: \$22,868.90

Amount of overpayment: \$811.10 (\$23,680.00 - \$22,868.90)

In summary, I find that the tenant has established a claim of **\$861.10**. This is comprised of \$811.10 in overpayment of rent, as above, plus the \$50.00 filing fee.

Conclusion

I order that the monthly rent must not be increased from \$821.09 without the proper notice as required by the legislation. I also order that any future rent increase must not exceed the amount permitted by the legislation.

In order to recover the full entitlement of \$861.10, as above, I order that the tenant may withhold the following amounts from the next two regular payments of monthly rent:

May 1, 2011: \$821.09 (balance due for May is nil)

June 1, 2011: \$ 40.01 (balance due for June is \$781.08)

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*.

DATE: April 5, 2011

Residential Tenancy Branch