



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement - Section 67;

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony of the parties is that the tenancy began December 01, 2006 and ended July 31, 2011. At the outset of the tenancy the rent payable was in the amount of \$550 per month. In 2008 the landlord verbally requested the tenant to pay an additional \$100 per month and the tenant verbally agreed to the increase and began paying \$650 per month April 2008 onward. In 2009 the landlord verbally requested the tenant to pay an additional \$100 per month and the tenant verbally agreed to the increase and began paying \$750 per month June 2009 onward.

The tenant is claiming that the landlord imposed an illegal rent increase and applies for return of the imposed increase in rent in the mitigated total of \$2800. The tenant testified that they are not applying for a different amount, and that they have not

amended their application, and decline an amount greater than \$2800. The tenant claims that they agreed to the rent increases, partly because they felt they might otherwise have to move. The tenant claims that they more recently learned the landlord imposed a rent increase which is not in compliance with the Act.

The landlord testified they discussed their request for a rent increase on both occasions and the tenant verbally agreed to the increases. The landlord claims that had the tenant not agreed on either occasion to a rent increase he may have taken a different course, if any. The landlord claims that at no time did they threaten the tenant or say the tenant had to vacate if they did not agree to an increase. The landlord testified that the tenant was not opposed to the increases, was agreeable, and always paid the rent and remained in the rental unit over three (3) years after the first rent increase without dispute.

Analysis

Based on the testimony of both parties, I have reached a decision.

I find that the Act states as follows:

Amount of rent 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 (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(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.

(4) [Repealed 2006-35-66.]

(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 accept the tenant's testimony that they felt that they would have to move if they did not agree to an increase. I also accept that the landlord did not threaten to end the tenancy in the absence of a rent increase, and I further accept that the landlord may have followed a different course in the absence of agreement by the tenant. On preponderance of the testimony, I find that the increases in rent may not have occurred as they did, if at all, if the tenant had declined the landlord's request for an increase. None the less the landlord collected an increase which does not comply with the legislation. It must be noted the tenant failed to dispute the rent increase for April 2008 within a reasonable time to do so, then again failed to dispute the second increase fourteen (14) months later; and, did not dispute the second increase for the remaining twenty-five (25) month duration of the tenancy. None the less I find that the tenant is entitled to recover a rent increase not in compliance with legislation. However, I also find that after three and one half years (3 ½) the landlord is prejudiced by the tenant's undisputed acceptance and payment of increases in rent beginning April 2008. Therefore, I limit the tenant's claim to increases in rent collected by the landlord, to the 24 month period preceding the end of the tenancy. I grant the tenant \$100 per month for 24 months: August 2009 – July 2011 ($\$100 \times 24 = \2400), in the aggregate of **\$2400**, without leave to reapply.

Conclusion

The tenant is given a Monetary Order under Section 67 of the Act for the amount of **\$2400**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 21, 2011

Residential Tenancy Branch