



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC , OLC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant. The tenant was seeking a refund of \$1,860.00 for 2 rent increases since 2008 that were not properly implemented in accordance with the Act. The tenant is also seeking a refund of guest charges in the amount of \$20.00 and an order to force the landlord to comply with the Act.

Issues to be Decided

Is the tenant entitled to a refund due to a noncompliant rent increase imposed by the landlord?

Is the tenant entitled to compensation for charges imposed for a guest?

Background and Evidence

The parties testified that this tenancy originally began in 2006 and the applicable rent prior to any increases is \$750.00. The tenant paid a security deposit of \$375.00 which is being held in trust by the landlord on behalf of the tenant. According to the testimony, in July 2008 the landlord imposed a rent increase of \$30.00, raising the rent to \$780.00 for 36 months until July 2011, at which time the landlord increased the rent by a further \$30.00. which continued for 13 months to August 2012. The tenant is requesting a refund of the over-charged rent of \$30.00 per month for 36 months and \$60.00 per month for 13 months, totaling \$1,860.00 plus \$20.00 for the guest charges imposed contrary to the Act.

The landlord submitted into evidence a copy of their tenancy agreement. The landlord freely acknowledged that the rent increase notification was not issued on the approved RTB form. However, the landlord pointed out that the tenant had been treated fairly. The landlord testified that the rent increases were modest and did not exceed the amounts that the rent could otherwise have been increased over the same period with proper notice each year. With respect to the guest charges, the landlord stated that additional occupants were not permitted by an understanding between the parties.

Analysis

With respect to the tenant's claim for over-paid rent, I find that the evidence confirmed that additional rent was collected without complying with the Act. Section 43(1) of the Act states that 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.

Even if it was proven that the parties both agreed in writing to a rent increase that exceeded the percentage allowed under the Act and Regulation, section 41 of the Act states that the landlord is still required to follow the process provided by the Act in implementing a rent increase including complying with sections 42(2) and 42(3) of the Act, which states that a landlord must give a tenant a Notice of Rent Increase at least 3 months before the effective date of the increase and that the Notice of the Rent Increase must be issued on the approved form.

In this instance, I find that there was no evidence of the written consent by the tenant. Furthermore, I find that the landlord did not follow the proper process as described in section 42, failing to serve the tenant with the formal Notice of Rent Increase at least three months in advance of the effective date, and neglecting to issue the Notice on the approved form.

Section 43(5) states, "*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*". Based on the Act, I find that the tenant is therefore entitled to be compensated for the additional rent collected.

However, a mediated discussion ensued and the parties agreed that the tenant would receive monetary compensation for the \$1,880.00 being claimed plus the \$50.00 cost of the application. In addition, from the total of \$1,930.00, the landlord would deduct rent owed for September 2012, (\$750.00) and cable charges for September, (\$33.00) leaving \$1,147.00 still outstanding in favour of the tenant which would be paid forthwith. The parties also agreed that the tenancy will end permanently on September 30, 2012 and the landlord will be issued with an Order of Possession effective on that date.

The tenant's security deposit of \$375.00 will be administered by the landlord in accordance with section 38 of the Act, within 15 days of the end of the tenancy and the provision of the tenant's written forwarding address.

Conclusion

Based on the mediated agreement between the parties, I hereby order that the landlord has already been credited with the tenant's September rent of \$750.00 and cable costs of \$33.00 payable for the month of September 2012. These charges are now deemed to have been paid in full and have been deducted from the tenant's total monetary compensation of \$1,930.00. I hereby grant the tenant a monetary order for the remainder in the amount of \$1,147.00. The monetary order must be served on the landlord and may be enforced in Small Claims court if not paid.

I hereby issue the landlord an Order of Possession, by consent, effective September 31, 2012. This order must be served on the tenant and may be enforced through an application to the BC Supreme Court if necessary.

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: August 27, 2012.

Residential Tenancy Branch