



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC and OLC

Introduction

This hearing was convened on the tenant's application to dispute a non-compliant Notice of Rent Increase, recovery of the increased rent paid under the notice and an Order that the landlord comply with the legislation and rental agreement.

In initial request to have a Notice to End Tenancy set aside was withdrawn as the landlord, by written submission of October 24, 2012 and reiterated at the hearing, had withdrawn the notice and acknowledged continuation of the tenancy.

Issue(s) to be Decided

This matter now requires a decision on whether the Notice of Rent Increase was defective and, if so, the appropriate remedy.

Background and Evidence

During the hearing, the tenant and his advocate made reference to a Notice of Rent Increase dated July 1, 2012 raising the rent from \$600 to \$625 per month effective September 1, 2012.

The tenant's evidence is that the notice was not received until July 3, 2012 and by setting an effective date of September 1, 2011, the notice did not comply with section 42(2) of the Act which requires that a rent increase must be served at least three months before the date on which it takes effect.

In the present matter, in order to take effect on September 1, 2012, the notice of increase would need to have been served by no later than May 31, 2012. The tenant stated that he had compensated for the incorrect service date by withholding the increase until November 1, 2012.

Analysis

I find that the Notice of Rent Increase did not comply with section 42(2) of the Act and I exercise the authority designated under section 62(3) of the *Act* to order it to be unenforceable and of no effect.

I further order that the tenant may recover the \$25 overpayment by withholding that amount from the rent due on December 1, 2012.

The landlord is at liberty to serve a new three month Notice of Rent Increase in compliance with Part 3 of the *Act*.

Conclusion

The Notice of Rent Increase of July 1, 2012 is set aside. The tenant may recover the November 2012 overpayment by withholding \$25 from the rent due December 1, 2012.

The landlord may now issue a new notice.

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 08, 2012.

Residential Tenancy Branch