



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *DRI, MNDC, OLC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, to dispute a rent increase and for a monetary order for overpayment of utilities and for the filing fee. The tenant also applied for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing the tenant withdrew the portion of his application for an order directing the landlord to comply with the *Act*.

Issues to be decided

Did the landlord serve a valid notice of rent increase to the tenant? Did the tenant overpay utilities? Is the tenant entitled to the recovery of his filing fee?

Background and Evidence

The tenancy started in August 2010. The current monthly rent is \$900.00 payable on the first day of each month. On October 14, 2012, the landlord served the tenant with a Notice of Rent Increase for an increase of \$50.00, effective November 01, 2012. The tenant filed a copy of the Notice.

The tenant also filed utility bills for the month of September. Both parties agreed that the tenant was responsible for a quarter of the bills. The landlord hand wrote the tenant's portion on the bills and the tenant paid the amount requested by the landlord. The landlord agreed that he had received the amount he requested.

The tenant noticed that the bottom lines of both the bills contained charges from a previous month. The tenant explained that after deducting past owed amounts, his share of both bills were \$22.00 less than what he paid the landlord.

The tenant is applying for the return of \$22.00, for the filing fee of \$50.00 and for the notice of rent increase to be set aside.

Analysis

Section 42 of the *Residential Tenancy Act* speaks to the timing and notice of rent increases that may be levied by a landlord. Pursuant to section 42(3), a notice of rent increase must be in the approved form and must be served to the tenant at least three months before the effective date of the increase. In addition the rent increase cannot exceed the amount calculated in accordance with the regulations.

Based on the testimony of both parties, I find that the landlord served the notice on October 14, 2012 for an increase in an amount that exceeds the amount of the increase that is in accordance with the regulations. The notice also did not provide the tenant with three months before it came into effect. For the above reasons, I find that the notice is invalid and accordingly cannot be enforced.

Upon review of the calculations by the tenant, I find that the tenant overpaid utilities by \$22.00 and therefore I find that the tenant is entitled to the return of this amount. Since the tenant has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$72.00 which consists of \$22.00 in overpaid utilities plus \$50.00 for the filing fee. I order the tenant to make a onetime deduction of \$72.00 from a future rent.

Conclusion

The notice of rent increase is set aside.

The tenant may make a onetime deduction of \$72.00 from a future rent.

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 28, 2012.

Residential Tenancy Branch

