



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

This is an application for a Monetary Order for \$3400.00, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the applicant entitled to a Monetary Order of \$3400.00 and recovery of the \$50.00 filing fee?

Background and Evidence

The applicant testified that:

- This tenancy began on August 1, 2008 with the monthly rent of \$1100.00.
- On September 2011, the landlord verbally raised the rent by \$100.00. No written notice of rent increase was ever given.
- She did not know that the landlord was not allowed to raise the rent by \$100.00, and therefore she just paid the increase.

- She paid the increased amount until October 2012 when she found out that the rent increase had been illegal and therefore for the months of November 2012, and December 2012 she only paid \$1100.00 per month.
- Since the rent increase was illegal she is asking for the return of the \$1400.00 in rent overpayments.
- She also believes she should be paid compensation as she believes she was harassed by the landlord.
- Every time she complained about noise from the upstairs tenant the landlord told her she should move out.
- When she complained that the rent increase had been illegal and reduced the amount for the last two months of the tenancy, the landlord spoke in a loud voice and told her she should be moving out.
- She believes this is harassment and therefore is requesting \$2000.00 compensation.

The respondent's agent testified that:

- They did not give any written notice of rent increase, however the tenant had lived in the rental unit for three years without any kind of increase, and had even moved extra people into the rental property and therefore they believe the rent increase was reasonable.
- When the increase was given the tenant paid the increase and did not complain and they feel it's unreasonable for her to now request all the increased rent back.
- They don't believe the tenant has a claim for harassment, because when the tenant did complain about the tenant upstairs they always ask the upstairs tenant to stop making noise.
- Further, when the tenant failed to pay the full rent for the months of November 2012, and December 2012 the landlord was upset and he may have raised his voice when speaking to the tenant, however at no time did he harass her.

Analysis

It's my finding that the landlord has collected an increase that is not allowed under the Residential Tenancy Act and the increased amount that was collected may be recovered by the tenant.

Sections 42, and 43 of the Residential Tenancy Act state:

Timing and notice of rent increases

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.

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 therefore allow the tenants claim for recovery of the \$1400.00 that was paid for an increase that did not comply with the Residential Tenancy Act.

It is my finding however that the applicant has not established a claim for harassment.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is basically just the applicant's word against that of the respondents, and that is not sufficient to meet the above burden of proof.

I will however allow the request for recovery of the \$50.00 filing fee as I have still allowed a substantial amount of the tenants claim.

Conclusion

I have allowed \$1450.00 of the applicants claim and I've issued a Monetary Order in that amount.

The remainder of this application is dismissed without leave to reapply.

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: October 02, 2013

Residential Tenancy Branch

