



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNDC , OLC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a refund of \$8,800.00 for overpaid rent from June 1, 2010, for increases that were not properly implemented in accordance with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

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

Background and Evidence

The parties testified that this tenancy originally began in 1987. The tenancy agreement shows that the applicable rent prior to any increases is \$600.00. The tenant testified that she paid a security deposit of \$350.00 which is being held in trust by the landlord on behalf of the tenant.

According to the tenant's testimony, on June 1, 2010, the landlord imposed a rent increase of \$200.00, increasing the rent from \$600.00 to \$800.00. The tenant testified that this rent was charged for 45 months to date. The tenant testified that the landlord did not issue a valid notice of rent increase as required by the Act, and that the amount of the increase was not in compliance with the Act.

The landlord submitted into evidence a copy of their tenancy agreement, a copy of an employment contract, a copy of the tenant's rent ledger, a copy of a One Month Notice to End Tenancy for End of Employment and copies of communications.

The landlord freely acknowledged that the rent increase in question notification was never issued on the approved RTB form.

However, the landlord made the following arguments:

1. This tenancy is not governed by the Residential Tenancy Act because it constitutes an employment contract.
2. The tenant consented to the rental rate increase by virtue of the fact that the tenant recorded and submitted the ledger data containing the additional rental charges.
3. The rental rate was off-set by an increase in remuneration for the tenant's work performed on behalf of the landlord.
4. The tenant did not pay the full \$200.00 difference in rent, but was granted a discount of \$100.00.

Analysis

Jurisdiction

I accept the testimony of both parties that they had an employer/employee relationship. I also find, based on the evidence, that they were involved in a landlord-tenant relationship as well. I find that the written tenancy agreement makes no reference to the tenant's employment.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions **under this Act;**
- (b) rights and obligations under the terms of a **tenancy agreement** that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

(My emphasis)

Given the above, I find that I have jurisdiction to hear and determine disputes about the tenancy agreement. At the same time I find that I do not have the authority to hear and determine employment-related disputes. Therefore, I will only consider the tenancy agreement and Act in this dispute.

With respect to the landlord's testimony that the tenant was compensated for the rent increase through a raise in pay for the employment, I find that I have no authority to consider employment-related wages under the Residential Tenancy Act.

Rent Increase

With respect to the tenant's claim for over-paid rent, I find that the evidence confirms 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 regulated process provided by the Act in implementing a rent increase, including complying with sections 42(2) and 42(3) of the Act, which state 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*”.

In regard to the alleged \$100.00 discount provided by the landlord, I find that the landlord’s allegation the tenant originally paid \$500.00 per month, not \$600.00 as stated in the tenancy agreement and that, when the rental rate was increased by \$200.00, the tenant then paid \$700.00 per month, not \$800.00, is not relevant to the issue of the noncompliant rent increase or overpaid rent. I find that I do not need to consider this information because the illegal rent increase was \$200.00 per month regardless of the base amount of rent actually paid by the tenant.

Based on the Act, I find that the tenant is therefore entitled to be compensated for the additional rent that was collected in contravention of the Act or Regulation.

Accordingly, I find that the tenant is entitled to be compensated in the amount of \$9,100.00, representing compensation of \$200.00 per month for 45 months and the \$100.00 cost of the application.

I order that the tenant’s security deposit of \$350.00 and the \$290.00 accrued interest must 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.

I hereby grant the tenant a monetary order in the amount of \$9,100.00. This order must be served on the landlord and may be enforced through an order from Small claims court, if unpaid.

Conclusion

The tenant is successful in the application and is granted a monetary order to reimburse the tenant for overpaid rent collected by the landlord in violation of the Act.

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: March 10, 2014

Residential Tenancy Branch

