



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARKERSON B.C. WHOLESALE LUMBER LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenant, his assistant, and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this tenancy began on March 1, 2005, that monthly rent began at \$1025 and is currently \$1300.

The tenant's monetary claim is in the amount of \$2705.44, which he claims is the amount of rent he has overpaid due to illegal rent increases.

The tenant's relevant documentary evidence included the forms entitled "Notice of Rent Increase-Residential Rental Units ("Notice")," which is the official form issued by the Residential Tenancy Branch ("RTB").

As shown by the evidence, the landlord issued the tenant Notices as follows:

- A Notice issued on October 26, 2006, raising the rent from \$1025 to \$1050, beginning February 1, 2007;
- A Notice issued on October 31, 2007, raising the rent from \$1050 to \$1100, beginning February 1, 2008;
- A Notice issued on September 18, 2009, raising the rent from \$1100 to \$1150, beginning January 1, 2010;
- A Notice issued on November 19, 2010, raising the rent from \$1150 to \$1200, beginning March 1, 2011;
- A Notice issued on February 23, 2012, raising the rent from \$1200 to \$1250, beginning June 1, 2012; and
- A Notice issued on February 11, 2013, raising the rent from \$1250 to \$1300, beginning June 1, 2013.

The tenant submitted, by way of a spread sheet, that he has paid a total of \$2705.44, as a rent overpayment due to the illegal rent increase by the landlord, as he raised the rent beyond the allowable amount, which is noted in the Residential Tenancy Branch Policy Guideline.

The landlord submitted that he had attempted to resolve this matter with the tenant prior to coming to dispute resolution; however, the tenant would not speak with him.

Analysis

The tenant's application seeks compensation for damages, or compensation in this case, for overpayment of rent due to alleged rent increases, which occurred starting in 2006.

Section 60(1) of the Act provides:

(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

I find under the Limitation Act the tenant only had two years to bring an action for compensation for those damages. Therefore, I will not consider any compensation for damages that occurred prior to November 26, 2011, as the tenant filed their application for dispute resolution on November 26, 2013. This is a period of 2 years up to the time the application was submitted. The portion of the claim predating November 26, 2011, is dismissed as it is outside of the 2 year period from the date the tenant allegedly began over-paying rent.

Section 43 of the Act says “a Landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application by a Landlord for an additional rent increase or by agreement in writing of the parties.” Section 42(2) of the Act says that “a Landlord must give a tenant a notice of rent increase at least three months before the effective date of the increase.”

RTB Policy Guideline #37 at p. 14 says that where a Landlord issues a Notice of Rent Increase that does not comply with the Legislation, it does not result in an increased rent and the Landlord must re-issue a new Notice and give the Tenants the requisite 3 months notice before the increase can take effect.

As I have determined that any rent increases predating November 26, 2011, are barred by the Limitation Act, I will consider the rent in effect on that date, which was \$1200, pursuant to the Notice effective for March 1, 2011; therefore I will consider only the last 2 Notices of Rent Increase, that being the one issued on February 23, 2012 and the one issued on February 11, 2013, as noted above.

The landlord's Notice raised the rent from \$1200 to \$1250. The rent increase allowed by the Residential Tenancy Regulations for 2012 was 4.3% and therefore the landlord was allowed to raise the rent by \$51.60. I therefore find the rent increase of \$50 for 2012 was within the allowable amount.

In 2013, the landlord raised the rent from \$1250 to \$1300, beginning June 1, 2013, and that he was allowed by the Regulations to raise the rent 3.8%. I therefore find the most the landlord was legally allowed to raise the rent was \$47.50, or from \$1250 to \$1297.50, and therefore the tenant has overpaid rent of \$2.50 per month since June 2013.

I therefore find the tenant is entitled to monetary compensation for damages for an illegal rent increase of \$27.50, calculated by the number of months since June 2013, through the date of this Decision, in the amount of \$2.50 per month.

I direct the tenant to deduct the amount of \$27.50 from a future month's payment of rent in satisfaction of his monetary award.

As the tenant's application contained at least partial merit, I allow the tenant recovery of his filing fee of \$50, and direct him to deduct this amount from a future month's payment of rent.

The tenant should advise the landlord when he is so making these deductions from his rent.

I also order that, ***beginning immediately***, the tenant's monthly rent obligation is \$1297.50, which would conform to the maximum allowable rent increase for the year 2013 of \$47.50. The rent will continue to be \$1297.50 per month until such time as it is increased by the landlord in one of the ways authorized under section 43 of the Act and as per the Regulations.

Conclusion

The tenant's application has been partially successful as I have granted him monetary compensation of \$77.50, for an overpayment of rent due to an illegal rent increase of \$27.50, and recovery of the filing fee of \$50.

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: April 10, 2014

Residential Tenancy Branch

