



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR, FF, O

Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution made by the Tenant.

The first Application was made by the Tenant in January, 2014 for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), regulation or tenancy agreement. The Tenant also applied to recover the filing fee and for ‘Other’ issues being the amount of future rent to be paid by the Tenant. The Tenant’s claim concerns compensation for illegal rent increases during the tenancy in the amount of \$16,138.00 (the “First Application”).

The Tenant made a separate Application in February, 2014, again for money owed or compensation for damage or loss under the Act, in the amount of \$1,410.39; to cancel a notice to end tenancy for unpaid rent or utilities; to allow the Tenant to reduce rent for repairs, service or facilities agreed upon but not provided; and to recover the filing fee (the “Second Application”).

As a result, both Applications were joined together to be heard in this hearing with the written consent of all the parties prior to the hearing.

The Landlords and the Landlords’ office manager who kept written records in relation to this tenancy appeared for the hearing. The Tenant also appeared for the hearing. No issues were raised by any of the parties in relation to the service of the hearing documents and evidence in accordance with the Act and the Rules of Procedure.

Second Application Preliminary Matters

The Tenant should have amended her First Application to include the items she elected on her Second Application in accordance with Rule 2.5 of the Rules of Procedure. As a result, I dismiss the Tenant’s claim for the recovery of the filing fee for the Second

Application; however, I considered the Tenant's request for recovery of the filing fee for the First Application.

At the start of the hearing, the Landlords withdrew the notice to end tenancy for unpaid rent or utilities which had been served to the Tenant on February 3, 2014. The parties consented to the withdrawal of the Notice. As a result, I was no longer required to cancel the notice to end tenancy.

This then left the Tenant's claim for monetary compensation for repairs she had completed to the rental suite. As a result, the Landlord agreed to settle the Tenant's remaining claim in full, in the amount of \$1,410.39. The Tenant was agreeable to this amount. As a result, pursuant to Section 63(2) of the Act, the Tenant is issued with a Monetary Order for this amount in full and final satisfaction of the Tenant's Second Application.

Issue(s) to be Decided

The hearing continued to hear the Tenant's First Application regarding the rent increases and the recovery of the filing fee.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

- Did the Landlords comply with the Act relating to the rent increases during the tenancy?
- Did the Tenant mitigate loss as required by the Act?
- Is the Tenant entitled to monetary compensation for the rent increases in the amount of \$16,138.00?
- What will be the rent amount payable by the Tenant as the tenancy continues?

Background and Evidence

Both parties agreed that this tenancy started on January 1, 1995 on a month to month basis. A written tenancy agreement was completed and provided as evidence for the

hearing which shows that the Tenant is recorded as an occupant and the Tenant's partner was the main renter under the "Tenant" section of the agreement. However, the main renter left the tenancy and the Tenant assumed the tenancy and continued to pay rent to the Landlords.

Monthly rent at the start of the tenancy was established at \$708.00, payable on the first day of each month. At the start of the tenancy, the Landlords were given a security deposit on November 24, 1994 for the tenancy in the amount of \$350.00, which the Landlords still retain.

The Tenant testified that she had made a number of improvements to the rental suite during the tenancy, such as painting the inside and outside of the house, and in return the Landlords agreed not to increase her rent. However, in 2007 the Landlords started to increase the rent. The Tenant testified to the following dates that she started to pay the rent increase amounts and provided rent receipts to support these amounts:

- November, 2007: increased from \$708.00 to \$810.00 by \$102.00
- July, 2009: increased from \$810.00 to \$910.00 by \$100.00
- July, 2010: increased from \$910.00 to \$960.00 by \$50.00
- July 2011: increased from \$960.00 to \$1,010.00 by \$50.00
- July 2012: increased from \$1,010.00 to \$1,060.00 by \$50.00
- May 2013: increased from \$1,060.00 to \$1,110.00 by \$50.00

The Tenant testified that the Landlords provided no Notice of Rent Increase as required by the Act and she was not given three months notice before she was required to make the increased payments. The Tenant testified that it was not until December, 2013 that she learnt that the rent increases imposed by the Landlords were not 'legal'. As a result, the Tenant testified that she was advised by the Residential Tenancy Branch to revert back to paying the original amount at the start of the tenancy of \$708.00, which the Tenant is currently paying and has done since December, 2012.

However, the Tenant now claims for "overpayment and lack of notice" for these rent increases in the amount of \$16,138.00

The Landlord ("BB") agreed with the above amounts in relation to the rent increases and was not aware of the rent increase provisions under the Act or the regulations. BB testified that he had always invited the Tenant to pay the increased amount and discussed these with her; as a result, they took her verbal agreement and rent payments of the increased amount as her consent.

BB testified and provided supporting evidence that they had completed significant repairs to the property, such as the addition of a new roof, windows, a driveway, new water lines, and that the rent paid by the Tenant was significantly less than similar rental properties. BB also submitted that the Tenant's rent had not been increased for the first 12 years and that the rent increases were fair market value.

Analysis

Part 3 of the Act and Part 4 of the Residential Tenancy Regulation provide rent increase provisions that a Landlord is obligated to follow during a tenancy. Having considered the evidence provided by both parties, I find that the Landlord failed to comply with these provisions in giving the Tenant proper legal notice, allowing for the relevant time before the rent increase could take effect, only increasing the amount allowed by the regulations each year or failing to make an Application to impose an increase above the legal allowable amount or obtaining the Tenant's written consent to go above the allowable limits.

In addition, Policy Guideline 37 to the Act states that payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount. Therefore, I also find that the Landlord failed to get the Tenant's written consent for the rent increases imposed during the tenancy.

Section 7(1) of the Act stipulates that a party not complying with the Act or the regulations must compensate the other for damage or loss that results. Therefore, I find that the Landlord is liable to pay the Tenant compensation under this section of the Act.

In making a determination on the amount of compensation payable by the Landlord to the Tenant, I have considered Section 7(2) of the Act which requires a party claiming compensation to mitigate their loss. I have also considered the legal doctrine of Laches which provides that a party to a contract who considers the other party has breached the contract must act within a reasonable time to have the breach corrected or loss compensated, failing which the party loses the right to claim any breach or loss.

In this case, both parties submitted that they were unaware of their rights and obligations under the Act and as a result, I find that while the Landlord did not comply with the Act, it would be unreasonable for the Landlord to have to pay **all** of the previous overpayments of rent since 2007 claimed by the Tenant.

The Tenant explained that during the first rent increase she was concerned about how she was going to pay the increased amount but continued to do so without making any attempt to identify her rights and obligations in paying the rent increase. At the start of the tenancy, a Tenant is obligated, as much as the Landlord, to be informed of their rights and remedies available under the Act and in this case, I find that it would have been prudent for the Tenant to have made attempts to address her concerns, through the communication platforms provided by the Residential Tenancy Branch, as to her rights in paying the rent increases over a seven year period; had the Tenant done this then this would have prevented the claim from escalating into a larger amount which the Tenant now claims.

The Tenant failed to clearly explain during the hearing and in her written submissions how she reached the monetary claim amount of \$16,138.00 in relation to the overpayments and did not provide a detailed breakdown of all the overpayments she had made during the tenancy. However, based on all of the foregoing, I find that it is more appropriate to compensate the Tenant for the last year that she was making overpayments based on the figures provided during the hearing.

I have calculated that for the last year of overpayments (up to and including November 2013), the Tenant was paying the increased amount over and above what the cumulative of rent increases up to that date should have been had the correct legal rent increase amounts been imposed. As a result, I calculated that from November 1, 2012 to November 2013, the Tenant made a total overpayment of \$3,040.24. As a result, I award the Tenant \$3,040.24 in monetary compensation.

It should be noted that I have not taken into consideration the amounts that the Tenant has underpaid during the last 5 months in which she reverted back to the rent amount payable at the start of the tenancy, but I have considered this as additional compensation as the Landlord had exceeded the legal allowable rent increases.

The Landlord had concerns about the Tenant reverting back to the original amount that was payable at the start of the tenancy and the Tenant did not want to pay the increased amount that she had been paying before December, 2013. While the parties did have a lengthy discussion around the amount of rent payable for future rent payments, the Tenant wanted a decision in this matter to be made on the basis of the evidence provided during the hearing.

As a result, I have determined the rent amount payable for future rent payments, by calculating the amount the Tenant would have had to pay had the Landlord imposed the proper legal rent increase amounts in each of the years the Tenant's rent was increased

as detailed above. On this basis, I have determined that the rent amount payable by the Tenant will be \$872.70 per month.

This increase will take effect from May 1, 2014, and will stay at this amount until the rent is increased in accordance with the Act and regulations which includes an Application by the Landlord to increase the rent in accordance with Section 43(3) of the Act.

As the Tenant has been successful in this matter, the Tenant is also entitled to recover from the Landlord the \$50.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount of monetary compensation payable by the Landlords to the Tenant in relation to the First Application is \$3,090.24.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order pursuant to Section 67 of the Act for a total amount of **\$4,500.63 (1,410.39 + 3,090.24)**. This order must be served on the Landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlords fail to make the payment in accordance with the Tenant's instructions.

The parties **may** also mutually agree, **in writing**, that the monetary award be used to reduce rent for the appropriate period to pay off the debt owed by the Landlords.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 09, 2014

Residential Tenancy Branch

