



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNR, MNDC, LRE, OPT, AAT, LAT, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following reasons:

- To cancel two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notices”) and to allow more time to cancel the Notices;
- To dispute an additional rent increase;
- For money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- To suspend or set conditions on the Landlord’s right to enter the rental unit;
- To obtain an Order of Possession for the rental unit;
- To allow the Tenant access to the unit;
- Authorize the Tenant to change the locks to the rental unit; and
- To allow the Tenant to reduce rent for repairs, service or facilities agreed upon but not provided.

The Tenant appeared for the hearing and provided affirmed testimony as well as written and digital evidence prior to the hearing. One of the Landlords named on the Application, who is the building manager, appeared for the hearing with his assistant building manager; however, only the Landlord provided affirmed testimony. The Landlord also provided written evidence prior to the hearing.

No issues were raised in relation to the service of the Tenant’s Application and the parties’ evidence provided.

The hearing process was explained and the participants were asked if they had any questions. Both parties 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. However, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The Landlord confirmed that the Tenant had been served with the first Notice dated October 7, 2014, by posting it on the Tenant's door on the same day. Section 90(c) of the Act provides that a document served in this manner is deemed to be received three day after. The Tenant testified that he had received the first Notice on October 10, 2014 and had made his Application on October 14, 2014. As a result, I determined that the Tenant had applied to cancel the Notice within the time limits imposed by Section 46(4) of the Act. Therefore, there is no requirement for me to determine the Tenant's request for more time to cancel the Notice, which is hereby dismissed.

The Tenant also confirmed that he was still residing in the rental suite and had applied for an Order of Possession because the Landlord had threatened him with eviction. Accordingly, I find that I do not need to make a determination on the Tenant's request for an Order of Possession which is also hereby dismissed.

The Tenant explained that he had not paid rent because the Landlords had imposed an illegal rent increase during this tenancy and that he was now seeking all of the illegal rent increase amounts he had paid. As a result, I determined that the Tenant's Application to cancel the Notice, to dispute an additional rent increase, and his monetary claim were all related.

In relation to the remainder of the Tenant's Application, the Tenant indicated that this related to repairs that the Tenant had requested which the Landlord had failed to do. The Landlord explained that the Tenant had impeded their ability to perform these repairs.

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single Application.

As a result, I determined during the hearing that I would not deal with all the dispute issues placed on the Tenant's Application in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue.

Therefore, I will deal with the Tenant's request to cancel the notice and the associated issues of the additional rent increases and the related monetary claim as detailed below. The remainder of the Tenant's Application was dismissed with leave to re-apply. The parties were cautioned about the provisions of the Act in relation to repairs and maintenance of a rental suite by both parties.

Issue(s) to be Decided

- Is the Tenant entitled to cancel the Notice?
- Did the Landlords comply with the Act relating to the rent increases?
- Is the Tenant entitled to monetary compensation for the rent increases imposed by the Landlord during the tenancy, if so for what amount?
- What will be the rent amount payable by the Tenant if the tenancy continues?

Background and Evidence

Both parties agreed that this tenancy started on June 8, 2006 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was completed and rent at the start of the tenancy was established at \$550.00, payable on the first day of each month.

The Tenant testified that on November 20, 2007 he was served with a typed letter from the Landlords which stated that effective March 1, 2008 his rent would be increased from \$550.00 to \$570.00 due to the Landlords' increased operating costs. The Tenant explained that for a period of 13 months up until the end of March, 2009 he paid \$20.00 extra for each month.

The Tenant testified that that on December 11, 2008 he was served with another typed letter from the Landlords which stated that effective April 1, 2009 his rent would be increased from \$570.00 to \$590.00. Again this was due to the Landlords' increased operating costs. The Tenant explained that for a period of 64 months (April, 2009 to the end of July, 2014) he paid a cumulative amount of \$40.00 extra for each month from this original amount on rent payable on the tenancy agreement.

The Tenant testified that on March 18, 2014 he was served with another typed letter from the Landlords which stated that effective July 1, 2014 his rent would be increasing from \$590.00 to \$650.00, again due to the Landlords' increased operating costs.

The Tenant testified that in the month of July, 2014 he discovered that the rent increases he had been paying to the Landlords were not legal. The Tenant consulted with the Residential Tenancy Branch who informed him of the rent increase provisions under the Act.

The Tenant testified that he provided the Landlord with two letters in July, 2014 which explained that the Landlords had imposed an illegal rent increase and that he would be making deductions from his rent accordingly and not paying the proposed \$650.00.

As a result, the Tenant started to pay the original amount of rent (\$550.00) under the agreement, for August and September, 2014. The Tenant then explained that in accordance with the Act, he paid no rent for October and November, 2014 as he was allowed to recover the illegal rent increases he had previously paid from his rent. However, the Landlord issued the Tenant with a Notice each relating to the month of October and November, 2014 which the Tenant now disputes.

The Tenant disclosed a total amount of overpayments of \$3,200.00 but did not provide any written explanation as to how he determined this amount. As a result, I calculated the amount according to the Tenant's testimony above, and determine that the amount he was claiming was **\$2,820.00** $((\$20.00 \times 13 \text{ months}) + (\$40.00 \times 64 \text{ months}))$.

The Landlord did not dispute the amounts and the dates that were testified to by the Tenant during the hearing. The Landlord explained that he was sent the typed letters of the rent increases from their head office and he served them to the Tenant accordingly. The Landlord explained that he personally was not aware that the notice had to be provided to the Tenant in the proper written form and that the increase could only be within the allowable limits stipulated.

The Landlord explained that they did not do anything about the Tenant paying \$550.00 for the months of August and September, 2014 but took issue with the Tenant when he did not pay any rent for October and November, 2014. This was the reason why the Tenant was issued two separate Notices for each month. Copies of both Notices were provided in written evidence. The first one is dated October 7, 2014 and the second one is dated November 3, 2014.

The Landlord explained that they were not aware that the Tenant deducted rent because of the illegal rent increases. However, the Landlord acknowledged receiving a letter from the Tenant, which was provided in written evidence, where the Tenant writes in part, *"You have not paid me for illegal overcharges of rent increases that I asked to recover from you two months earlier. Therefore, you have forced me to deduct from rent until I recover my losses. I am at the same time pursuing to collect this same total lump sum amount"*.

[Reproduced as written]

The Landlord explained that they have filed an application with the Residential Tenancy Branch to increase the Tenant's rent beyond the legal allowable limit and a hearing to determine this issue has been scheduled to be heard on December 10, 2014. The Landlord explained that they did try and get the Tenant's consent to increase the rent for the increase related to July, 2014 but the Tenant refused.

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 Section 42(3) of the Act in giving the Tenant proper legal notice for the rent increases imposed during the tenancy.

Section 43(1) (c) of the Act explains that a Landlord may impose a rent increase above the allowable limits if the Tenant agrees to it **in writing**. However, 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 find that the Landlord also failed to get the Tenant's written consent for the rent increases imposed during the tenancy.

Under the circumstances of this case, I find that the Landlord's breach of the Act in providing the Tenant with proper legal notice to increase the rent, gives merit to the Tenant's claim for monetary compensation. As a result, I find that the Tenant would have been entitled to all of the illegal rent increases he had paid during this tenancy in the amount of **\$2,820.00**.

I also make a finding that as the Tenant's rent was not increased in accordance with the Act, the rent payable under the tenancy agreement should remain in the original amount before the Tenant paid the first increase, which was established at \$550.00 per month. Therefore, I find that the Tenant made the correct rent payments for August and September, 2014.

In relation to the unpaid rent for the months of October and November, 2014 for which the Tenant was served the Notices by the Landlord, I make the following finding. Section 43(5) of the Act states that if a Landlord collects a rent increase that does not comply with the Act, the Tenant may deduct the increase from rent or otherwise recover the increase.

As the Act allows a Tenant to make deductions or not pay rent to recover losses through an illegal rent increase, I find that the Tenant did have authority not to pay rent for October and November, 2014. Accordingly, I find that both Notices must be cancelled.

In determining the amount to be awarded to the Tenant for the illegal rent increases, I have taken off the amount the Tenant has not paid for the months of October and November, 2014 for a total amount of \$1,100.00. After offsetting the amount the Tenant would have been entitled to for the illegal rent increases, with the amount the Tenant has not paid in rent, the Tenant is entitled to a balance of \$1,720.00 (\$2,820.00 - \$1,100.00).

In determining how the Tenant is to achieve this monetary relief, the Act allows me to order the Tenant to make further deductions from his rent. However, after considering the fact that the Landlord has an application for an additional rent increase scheduled in the near future, a determination of the Landlord's Application could impact and confuse the amount the Tenant can deduct from his rent. Therefore, in the circumstances, I find it more appropriate to issue the Tenant with a Monetary Order for \$1,720.00 payable by the Landlord. Accordingly, the Tenant is instructed to continue to pay monthly rent in the amount of **\$550.00** until this amount changes in accordance with the Act.

Conclusion

For the reasons above, I cancel the Notices dated October 7, 2014 and November 3, 2014. The tenancy will continue until it is ended in accordance with the Act.

I grant the Tenant a Monetary Order pursuant to Section 67 of the in the amount of **\$1,720.00**. 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 Tenant is to continue to pay rent in the amount of **\$550.00** per month as per the original tenancy agreement until this amount changes in accordance with the Act. The remainder of the Tenant's Application is dismissed with leave to re-apply.

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, 2014

Residential Tenancy Branch

