



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the tenant by leaving it in his mail box on January 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order disputing an additional rent increase?
- b. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated January 2, 2015?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to an order to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on October 1, 1997 and continue on a month to month basis. The rent was \$775 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$400 at the start of the tenancy.

The tenant testified that he was required to pay rent increases as follows:

Year	Monthly Rent	Rent Increase	Amount of overpayment per year
1997 to 2003	\$775		
2004	\$825	\$50	\$600
2005	\$825	\$50	\$600
2006	\$850	\$75	\$900
2007	\$910	\$135	\$1620
2008	\$960	\$185	\$2220
2009	\$1035	\$260	\$3120
2010	\$1035	\$260	\$3120
2011	\$1035	\$260	\$3120
2012	\$1035	\$260	\$3120
2013	\$1035	\$260	\$3120
2014	\$1035	\$260	\$3120
		TOTAL	\$24,660

The tenant testified he was never given a Notice of Rent Increase of any sort for any of the rent increases.

The landlord submits the tenant should be held to the rent increase as he agreed to the rent increase as evidenced by the fact that he paid them. He further submits the landlord should not be required to retroactively re-pay these rent increases. He testified that his father passed away in 1997 and mother, who has limited education, took over the management of the property. She was completely unaware of the requirements of the Residential Tenancy Act about using written tenancy agreement and a Notice of Rent Increase in the approved form.

Relevant Law:

Section 40 - 43 of the Residential Tenancy Act provides as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

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.

Policy Guideline #37 provides as follows:

“A tenant’s rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect (my emphasis). The tenant’s rent can only be increased once every 12 months. A rent increase that falls within the limit permitted by the applicable Regulation cannot be disputed at a dispute resolution proceeding.

Analysis:

The landlord did not dispute the timing and the amount of the rent increases. He also did not dispute that they were given without the use of the approved form. I determined there has been a rent overpayment of \$24,660 which the tenant is entitled to recover.

The Residential Tenancy Act requires that the landlord use the approved form when giving a rent increase. It also provides under section 43(5) that the tenant is entitled to deduct the increase from the rent or other recover the increase. I do not accept the

submission of the landlord that the rent increases are valid as the tenant consented to the increases as evidenced by the fact that he paid them. The reason the Act requires the approved form is that it advises the tenant of his rights including the right to dispute a rent increase that is excessive. Further, the Act does not provide for a limitation period as to how far back a tenant is entitled to claim.

As a result I determined the rent continues to be \$775 per month as a rent increase in the approved form has not been given.

Tenant's Application:

I ordered that the Notice to End Tenancy dated January 2, 2015 be cancelled as the tenant is entitled to apply the rent overpayment to rent that is due and owing.

I further ordered that the landlord pay to the tenant the sum of \$24,660 plus \$100 for the cost of the filing fee for a total of \$24,760 such sum may be applied to future rent.

Landlord's Claim - Order of Possession:

I dismissed the landlord's application for an Order for Possession as the Notice to End Tenancy has been cancelled.

Analysis - Monetary Order and Cost of Filing fee

I dismissed the landlord's application for a monetary order as I determined the landlord failed to prove that rent is owed.

In the box setting out the Details of Dispute the landlord raised the following issue:

"Issue 2 request for approval to raise rent to current market value. The other side of the duplex rents for \$1900." The tenant disputes the landlord's claims but he did not provide documentary evidence of similar rental units.

I ordered that this part of the application be severed for the following reasons:

- a. The landlord failed to properly identify this claim in the Application for Dispute Resolution.
- b. The landlord failed to pay the proper filing fee associated with such an application;
- c. The landlord's Application was filed on January 13, 2015. Normally the hearing of this type of claim is not scheduled for until several months. Thus a tenant is given a fair opportunity to obtain evidence to dispute the landlord's application. At the hearing the tenant disputed the landlord's claim but did not provide documentary evidence. I determined the tenant has not been given a sufficient time to adequately prepare for this issue and to proceed with it at this time would result in a denial of natural justice.
- d. The landlord has submitted photocopies of Craigslist advertisement showing rental units that are allegedly comparable. The landlord did not offer the opinion of a real estate agent or some other professional. I determined that it was appropriate to give the landlord an opportunity to fully consider the evidence he intends to present.

As a result I determined that the issue raised by the landlord seeking an additional rent increase be severed. The landlord has the right to file a new Application for Dispute Resolution making this claim.

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: February 03, 2015

Residential Tenancy Branch

