



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order disputing an additional rent increase.
- b. A monetary order in the sum of \$137.92

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 Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the landlord carries on business. 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 landlord has given a rent increase that does not comply with the Act and Regulations?
- b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenancy began on April 1, 2011. The rent at the time the tenancy began was \$400 per month payable in advance of the first day of each month. The tenant paid a security deposit of \$200 at the start of the tenancy.

On December 13, 2014 the landlord served a Notice of Rent Increase on the approved government form increasing the rent from \$400 to \$410 commencing April 1, 2015.

The landlord applied for an additional rent increase. The hearing was held on July 15, 2015 by conference call. The Tenant failed to attend. At that hearing the arbitrator ordered that the landlord be permitted an additional rent increase raising the tenants' rent for \$400 to \$440 and authorizing the landlord to serve a 3 month notice..

I accept the testimony of the landlord which is confirmed by the documents of the tenant that the landlord served the Notice of Rent Increase on the Tenant by registered mail which was signed for by the Tenant on August 8, 2015. The Notice purports to increase the rent by \$40 from \$410 to \$450. This amount was in error. However, the tenant has paid \$440 per month commencing December 1, 2015. She paid \$450 per month on September 1, 2016 and October 1, 2016 as demanded by the landlord.

Law

The relevant provisions of the Residential Tenancy Act are 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.

Analysis

The tenant submits the landlord is limited to a rent increase of 2.9% or \$11.89 for 2016.

A landlord is limited to rent increase as provided by the regulations unless the landlord has obtained an order from an arbitrator permitting an additional rent increase in accordance with the Regulations.

In a decision dated July 20, 2016 an arbitrator made an order permitting the landlord to increase the rent to \$440 per month.

The landlord submitted that an error was made in that the arbitrator assumed the rent for \$400 per month when in fact it was \$410- per month. I do not accept this submission. The decision of the arbitrator dated July 20, 2015 is binding on the parties. It provides that the landlord can increase the rent to \$440 per month. This decision is binding on both parties including the tenant who failed to attend the hearing.

I find that the landlord served a Notice of Rent Increase on the Tenant in August 2015. This Notice purported to increase the rent to \$450 per month. The amount of the rent increase is not consistent with the order. However, I determined the landlord was entitled to \$440 per month. The tenant has paid \$440 from December 1, 2015 to August 1, 2016. She paid \$450 per month on September 1, 2016 and October 1, 2016.

Monetary Order and Cost of Filing fee

In summary I determined the rent is \$440 per month. The tenant has paid \$450 for September and October 2016. She is entitled to recover the \$20 overpayment. **I ordered the landlord(s) to pay to the tenant the sum of \$20 such sum may be deducted from future rent. I dismissed the rest of the Tenant's claim.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: October 19, 2016

Residential Tenancy Branch