



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- a monetary order for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement; and
- an order for the landlord to return the tenant's personal property.

Both the landlord's agent "S.M." (the "Landlord") and the tenant appeared at the teleconference hearing and gave affirmed testimony. The landlord S.M. also acted as agent for A.D, the other agent for the landlord named on the application. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

At the start of the hearing, the tenant withdrew their claim for an order that the landlord return the tenant's personal property.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The undisputed testimony established that a month to month tenancy started on September 1, 2013 pursuant to a written tenancy agreement between the tenant and the landlord's agents "S.M." and "A.D." dated September 1, 2013. The tenant submitted

in evidence a written tenancy agreement which established that rent in the amount of \$700.00 is due on the 5th and 20th day of each month.

Initially, the owner landlord resided in the tenant's unit, with S.M. and A.D. residing in the basement suite. The parties, S.M. and A.D, took over as the landlord's agent when the owner landlord moved out and the tenant moved into the landlord's unit. S.M. and A.D. have their own separate tenancy agreement with the owner landlord.

The tenant resided in the rental until April 2016 but the rent was paid up to and including the month of May 2016. The rent payable for May 2016 was the subject of a prior application for dispute resolution which was resolved by way of a settlement agreement reached between the parties.

The undisputed testimony established that in March 2015 the owner landlord advised S.M. and A.D. that he was increasing the rent by \$300.00 each month effective September 2015.

S.M. testified that he then had a discussion with the tenant informing him that his rent was increasing by \$100.00. S.M. explained that the rent increase declared by the owner landlord was shared between the three occupants - the tenant, S.M. and A.D. The tenant began to pay the increased rent of \$800.00 starting September 2015.

S.M. testified that the rent increase was agreed upon by the tenant although the agreement is not in writing. The tenant testified that he did not feel that he had any choice but to pay the rent increase and that his compliance did not mean that he agreed with it.

The tenant argued that the rent increase was not carried out in accordance with the *Act* and therefore an illegal rent increase.

The tenant is seeking a monetary order in the total amount of \$900.00 for the excess rent in the amount of \$100.00 paid for each of the months starting September 2015 up to and including May 2016.

Analysis

Based upon the above, the testimony and documentary evidence and on a balance of probabilities, I find as follows.

Section 43(1) of the *Act* permits a landlord to impose a rent increase up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by an arbitrator on application, or
- (c) agreed to by the tenant in writing.

Policy Guideline #37 explains the requirements regarding rent increases pursuant to s.43 of the *Act*. 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. 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.

Unless a tenant agrees to a rent increase of an amount that is greater than the prescribed amount, a landlord must apply for dispute resolution for approval to give the additional rent increase.

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. The landlord must still follow requirements regarding the timing and use of approved notice of rent increases.

The above policy guideline also explains that a tenant paying a rent increase in an amount more than the allowed annual increase does not constitute a written agreement.

If a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected.

Based on the undisputed evidence, I find that the tenant's rent was increased by \$100.00 starting September 2015 with the new rent fixed at \$800.00 each month. I find that the tenant paid \$800.00 for each of the months starting September 2015 up to and including May 2016 for a total of 9 months.

I find that the \$100.00 increase exceeded the amount permitted in the Regulation for that year.

The landlord testified to an oral agreement with the tenant to accept the increase, but not to a written agreement as required by the *Act*. The tenant denies that there was any

agreement to pay the increased amount. In accordance with Policy Guideline #37, I find that the fact that the tenant paid the rent increase does not constitute a written agreement.

The *Act* requires a landlord to give notice to raise the rent in a specific way. Under section 5 of the *Act*, the landlord and the tenant may not agree to contract outside of the *Act*. Therefore, even if there was such an oral agreement (which I make no findings on) it would not be valid to increase the rent.

I also find that there is insufficient evidence that the landlord gave proper notice of the rent increase in the approved form as required by section 43 of the *Act*. Therefore, I find that the landlord was not entitled to any rent increase.

Based on the foregoing, I find that the tenant is entitled to recover the \$100.00 excess rent payment for each of the months of September 2015 up to and including May 2016. Accordingly, I find that the tenant is entitled to a monetary order in the amount of \$900.00.

Conclusion

The tenant is granted a monetary order in the amount of \$900.00 which must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 7, 2017

Residential Tenancy Branch