



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution (the "Application") to dispute an additional rent increase and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

Both Tenants appeared for the 14 minute hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents for this hearing.

The Tenants testified that they served notice of this hearing and a copy of the Application to the Landlord's service address as it appears on the signed tenancy agreement. The documents were sent by registered mail on May 20, 2017 but were returned to the Tenants as unclaimed by the Landlord. The Tenants provided the Canada Post tracking number into evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenants, I find the Landlord was deemed served with the required documents on May 25, 2017 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenants.

Issue(s) to be Decided

- Is the rent increase imposed on the Tenants by the Landlord illegal?
- If so, what amount is to be paid back to the Tenants?

Background and Evidence

The Tenants testified that this tenancy started on March 1, 2016. A written tenancy agreement was signed and provided into evidence which shows that rent is payable by the Tenants in the amount of \$700.00 on the first day of each month. The Tenants paid a security deposit of \$350.00.

The Tenants testified that eight months into the tenancy, namely in October 2016, the Landlord verbally informed them that had to pay an extra \$100.00 in rent and that starting from November 2016 onwards the Tenants were to pay monthly rent of \$800.00 otherwise they would have to move out. The Tenants explained that fearing for their safety and not knowing their rights under the Act until recently, they paid the increased rent amount from November 2016 onwards and have been doing so until this hearing.

The Tenants confirmed that they had not been served any written formal notice of the rent increase and neither had they provided the Landlord with written consent to pay the increased amount. As a result, the Tenants filed to seek \$700.00 for the seven months of increased rent they have been paying until the time they filed the Application. The Tenants explained that since making the Application, they have continued to pay the illegal rent increase for June and July 2017 and also seek the return of the overpayment for these months for a total of \$900.00.

Analysis

Part 3 of the Act explains the rent increase provisions that parties must follow during a tenancy. In particular, Section 42(1) of the Act prohibits a landlord from imposing a rent increase for at least 12 months after which the tenant's rent was first established. Furthermore, Section 42(2) and 42(3) of the Act requires a landlord to give to a tenant a proper notice of rent increase form and allow for three months' notice before the rent increase can be applied and becomes effective. In addition, Section 43(1) of the Act only allows a landlord to increase the rent by the allowable amount calculated in accordance with the Residential Tenancy Regulation.

Based on the Tenants' undisputed evidence before me, I find the Landlord has failed to comply with the rent increase provisions of the Act. I accept that the rent amount was established on March 1, 2016 in the amount of \$700.00. Therefore, the earliest the Landlord could have increased the rent for this tenancy would have been March 2017 and only by the allowable amount prescribed by the Regulation.

In addition, the Landlord failed to give the Tenants any proper notice of rent increase in the approved form. I accept that the Tenants did not provide the Landlord with any written consent to pay the increased amount imposed by the Landlord and pursuant to

the Policy Guideline 37 titled Rent Increases, 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.

Based on the foregoing, I find the Landlord has breached the Act and has imposed on the Tenants an illegal rent increase. I find the rent amount payable by the Tenants for this tenancy will remain at \$700.00 payable per month until such time this changes pursuant to the Act.

Section 7(1) and 67 of the Act provide that if a party breaches the Act, the regulations or a tenancy agreement, the other party must be compensated. Therefore, I turn my mind to the Tenants' monetary claim as follows.

Firstly, pursuant to my authority under Section 64(3) (c) of the Act, I amend the Tenants' monetary claim from \$700.00 to \$900.00 in order to reflect the correct amount of the illegal rent monies I find the Tenants have been paying contrary to the Act. Therefore, I find the Landlord must pay back \$900.00 in illegal rent increases to the Tenants.

The Tenants may achieve this relief in one of two ways. The Tenants are issued with a Monetary Order for \$900.00. This order is attached to the Tenants' copy of this Decision. This order is enforceable in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment after the order is served on him.

In the alternative, the Tenants may achieve this relief by deducting this amount from future rent in accordance with Section 72(2) (a) of the Act. If the Tenants chose to pursue this method of relief, then they may withhold \$700.00 in rent for August 2017, and an additional amount of \$200.00 for September 2017 to realise the full relief provided.

For the purposes of clarity, the Tenants will pay: no rent for August 2017; \$500.00 for September 2017; and \$700.00 for October 2017 and every month thereafter until the rent amount changes pursuant to the Act. The Tenants may want to serve a copy of this Decision to the Landlord when making the reduced rent payments, although the Landlord will be provided a copy of this Decision by the Residential Tenancy Branch.

Conclusion

The Landlord did not comply with the rent increase provisions of the Act and Regulation. The Tenants' Application to recover \$900.00 in illegal rent increases is granted. The Tenants may achieve this relief from future rent or through the Monetary Order issued to them.

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: July 12, 2017

Residential Tenancy Branch