



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE GIAN AND AMAR THIND TRUST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, DRI, MNDC, OLC, RR, RP

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") for the following reasons:

- to cancel a notice to end tenancy for unpaid rent and cause;
- 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;
- for the Landlord to comply with the Act, regulation or tenancy agreement;
- for the Landlord to make repairs to the rental unit; and,
- to reduce rent for repairs, services or facilities agreed upon but not provided.

Preliminary Issues

One of the Tenants appeared for the hearing and provided affirmed testimony. There was no appearance for the Landlord during the 19 minute hearing. The Tenant testified that he had personally served the Landlord with the Application and Notice of Hearing documents on July 6, 2017. In the absence of the Landlord, I find the Tenants served the required documents for this hearing pursuant to Section 89(1) (a) of the Act.

However, I noted that the Tenant had not provided any documentary evidence for this hearing. The Tenant explained that he was in the process of moving out of the rental unit and was planning to be out by the end of September 2017. The Tenant also stated that he had paid the rental arrears outstanding on the notice to end tenancy for unpaid rent. Therefore, as the Tenants failed to provide any of the notices to end tenancy into evidence but were now moving out of the rental unit, I dismissed the Tenants' Application to cancel the notices to end tenancy.

As the tenancy is due to end, I also dismiss the Tenants' request for the Landlord to make repairs to the rental unit and as this is now a moot issue.

Issue(s) to be Decided

- Has the Landlord followed the rent increase provisions of the Act?
- Are the Tenants entitled to monetary compensation for an illegal rent increase?
- Are the Tenants entitled to costs associated with the alleged failure of the Landlord to make repairs to the rental unit?

Background and Evidence

The Tenant testified that this tenancy started in October 2014. The Tenant explained that they did sign a document which may have been a tenancy agreement, but they did not have a copy of this. The Tenant testified that the monthly rent is \$950.00 which was payable half on the 1st day of each month, and the remaining half is payable on the 14th day of each month.

The Tenant testified that in October 2015 the Landlord increased their rent from \$950.00 to \$1,000.00. The Tenant explained that they had not given any written consent for the Landlord to charge this amount but, without knowing their rights, had paid it for one year of the tenancy. When the Tenants realised that the Landlord had not given them a proper notice of rent increase, the Tenants informed the Landlord at which point the rent amount was agreed to be returned back to \$950.00.

The Tenants now seek \$600.00 for every month they paid an extra \$50.00 each month over the course of the year and ask that the Landlord comply with the rent increase provisions of the Act. The Tenant explained that the resulting \$350.00 for the monetary claim was because there was a broken window in the rental unit which was not fixed by the Landlord and as a result, the Tenants were seeking compensation for this amount. The Tenant acknowledged that they had not provided any evidence of the broken window or repairs in the rental unit and had not put the Landlord on written notice either.

Analysis

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a Landlord must follow in order to affect a legal rent increase. The Act requires the Landlord to give to a Tenant a notice of rent increase at least 3 months before the effective date of the increase and that the notice must be on the approved form (form RTB 7). The Act also requires that a Landlord not impose a rent increase that is more than the allowable limit which is calculated in accordance with the regulations (for 2015 this was 2.5%).

Based on the foregoing, I find the Landlord failed to comply with the Act in serving the Tenants with a proper legal and approved notice of rent increase, and that the Landlord increased the Tenants' rent for an amount that was above the legal limit. There was no

requirement for the Tenants to have paid this illegal rent increase. Therefore, I grant the Tenants recovery of the extra \$600.00 paid in rent contrary to the Act.

With respect to the Tenants' remaining monetary claim for repairs to the rental unit, I dismiss this portion without leave to re-apply. This is because, the Tenants provided no corroborative evidence of the existence of the alleged damages testified to. In addition, there was no supporting evidence to show that the Landlord had even been put on written notice of the complaints and given an opportunity to remedy them.

As the Tenants had to file the Application and have been partly successful, I also award them the \$100.00 filing fee. Therefore, the total amount awarded to the Tenants is \$700.00. The Tenants are issued with a Monetary Order for this amount which must be served onto the Landlord and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court. The Landlords may also be held liable for any enforcement costs incurred by the Tenants.

Conclusion

The Landlord failed to comply with the rent increase provisions of the Act. Therefore, I award the Tenants recovery of the illegal amounts paid in this tenancy and the filing fee for a total of \$700.00. The remainder of the Tenants' Application and monetary claim are dismissed without 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 Act.

Dated: September 18, 2017

Residential Tenancy Branch