



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL, CNR, OLC, FF:

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution. The Landlord did not attend the hearing in support of this Application.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a Notice to End Tenancy for Unpaid Rent and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on October 10, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant stated that he spoke with the Landlord on October 20, 2017, at which time the Landlord confirmed receipt of these documents. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Preliminary Matter

As the Landlord did not attend the hearing, I find that he failed to diligently pursue the application. I therefore dismiss his Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

Has the rent been increased in accordance with the legislation?
Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Tenant stated that:

- his tenancy began on July 01, 2011;
- at the start of the tenancy the rent was \$889.00 per month;
- in 2015 the Tenants were given proper notice of a rent increase, which increased the rent to \$911.00;
- the Tenants were given notice of a rent increase, effective March 01, 2017, which increased the rent from \$937.00 to \$971.00;
- the Tenants were never given notice of a rent increase that raised the rent from \$911.00 to \$937.00;
- the Tenants have not paid the rent increase of \$971.00, as they do not believe the rent increase complies with the legislation;
- the Tenants have continued to pay rent of \$911.00;
- on October 06, 2017 the Tenants received a Notice to End Tenancy for Unpaid Rent; and
- he does not believe the Tenants owed any rent on October 06, 2016 on the basis that they have continued to pay \$911.00 in monthly rent and they do not believe the rent has been properly increased from \$911.00.

Analysis

Section 42 of the Act reads:

- (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.

Section 43 of the *Act* reads:

- (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.

The allowable rent increase for 2017, pursuant to section 43(1)(a) of the *Act*, is 3.7%.

On the basis of the testimony of the Tenant I find that the rent was properly increased to \$911.00 in 2015.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary I find that the Tenants never received notice that his rent was increased from \$911.00 to \$937.00. I therefore find that his rent was not increased to \$937.00 in accordance with section 42(2) of the *Act* and that the Tenants' rent remained at \$911.00.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary I find that I find that the Tenants' received notice that the rent was increasing to \$971.00, effective March 01, 2017. As the rent was only \$911.00 when the Tenants received this notice of rent increase, I find that the Landlord was attempting to impose a rent increase of more than 6%. As this rent increase exceeds the 3.7% rent increase that is permitted for 2017, I find that the Landlord did not have the right to increase the rent to \$971.00. I therefore find that the Tenants' rent remains at \$911.00 until such time as the Landlord increases it in accordance with the legislation.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary I find that the Tenants had paid all of the rent that was due by the time they received the Ten Day Notice to End Tenancy that is the subject of this dispute. I therefore find that the Landlord did not have the right to end the tenancy, pursuant to section 46 of the *Act*, and I grant the Tenants' application to set aside the Ten Day Notice to End Tenancy that is the subject of this dispute

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Tenants' application to set aside the Ten Day Notice to End Tenancy, dated October 05, 2017.

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: December 22, 2017

Residential Tenancy Branch