Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 24, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- Cancel the Landlord's 10-Day Notice to End Tenancy for unpaid rent or utilities (the 10 Day Notice); and,
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's documentary evidence. However, during the hearing I found that the last (and second) evidence package from the Tenant was made available only 5 days before the hearing, and would not be considered. The Rules of Procedure state that the applicant's evidence must be served on the respondent no later than 14 days before the hearing. I did consider the other evidence submitted by the Tenant, and the Landlord, which were served in accordance with the Act, the Rules of Procedure, and each party confirmed receipt of that evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Further, the Tenant stated that she moved out of the rental unit at the end of November 2017, and does not need to cancel the 10 Day Notice anymore. Given the Landlord does not require an order of possession at this time and the Tenant does not need to cancel the 10 Day Notice, I dismiss this portion of the Tenant's application, without leave to reapply.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The parties testified that the tenancy began in July of 1997. Rent was initially set at $1,050.00 and was due on the first of the month. A security deposit of $525.00 was paid by the Tenant to the Landlord at that time.

The Tenant stated that she decided she was going to move out last fall (November of 2017) and she started researching how she could end her tenancy. At this time the Tenant stated she became aware that the Landlord had been increasing her rent improperly. She stated that sometimes she would not be given a full 3 months before the increased rent amount would kick in, and other times the Landlord would increase it beyond what the Act allows for. The Tenant provided a spreadsheet detailing what she paid over the years, and what the increases were. She also provided copies of all the Notices of Rent Increase over the years. The Tenant has stated that she should be paid back the money that she overpaid all this time, and she calculated this to be $12,298.10, dating back to 2005. The most recent Notice of Rent Increase was dated January 6, 2015, and was for $50.00, with an effective date of May 1, 2015.

The Landlord stated that she has kept all the rent increases reasonable, and at a fair market value. She stated that she did not increase the rent every year, and often it would go a few years between rent increases. The Landlord also stated that she tried to look at the Tenant's spreadsheet as to why she should be given over $12,000.00, but it does not add up. The Landlord provided her own spreadsheet to show that her rent increases were not unreasonable. The Landlord stated she would sometimes round up the amounts for the rent increases, but never in an unreasonable manner. The Landlord stated that she believed she was doing things lawfully and always tried to be fair but she now realizes that she should have been more careful with the exact amounts she

increased the rent by. She stated that she has since learned how to do the rent increases properly.

Analysis

Part 3 of the Act and Part 4 of the Residential Tenancy Regulation provide rent increase provisions that a Landlord is obligated to follow during a tenancy.

Section 42(2) of the Act provides that a Landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) provides that a notice of rent increase must be in the approved form. Section 43 provides that 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.

Residential Tenancy Policy Guideline 37- Rent Increases - provides that "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".

In this case, the Tenant seeks compensation for rent paid pursuant to rent increases which were not affected in accordance with the Act.

Having considered the evidence provided by both parties, I find that the Landlord has made some errors when issuing the Notices of Rent Increase. It appears that some of these Notices have incorrect dates, and others increase the rent more than what was allowable under the Act.

I note that, although some mistakes were made by the Landlord when filling out the Notices of Rent Increase over the years, the correct forms were used for the vast majority of instances. I further note that these forms contain contact information for the Residential Tenancy Branch, an information section to help tenants understand their rights under the Act, and a link to the Residential Tenancy Branch website. Despite receiving these forms over the years, and being provided with resources to help her understand her rights and obligations, the Tenant did not apply for compensation until November of 2017, when she decided she wanted to move out.

I find no evidence that the Tenant expressed to the Landlord over the years that she thought the rent increases were unacceptable, or unreasonable, up until the fall of 2017 (approximately 15 years after her first rent increase).

Although section 7(1) of the Act stipulates that a party not complying with the Act or the regulations must compensate the other for damage or loss that results, I find the Tenant's failure to mitigate her loss over her 20 year tenancy, pursuant to Section 7(2) of the Act, is detrimental to her claim, and prejudicial to the Landlord.

As Policy Guideline 5 explains, this is commonly known in the law as the duty to mitigate: "This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided."

I note the most recent rent increase was more than 2.5 years before the end of the tenancy, and I do not find it reasonable for her to wait this amount of time, let alone 15 or 20 years, prior to making an application for review, keeping in mind the Tenant had information readily available to her over the years with respect to disputing these increases and what her rights were (located on the Notice of Rent Increase itself). Ultimately, I find the Tenant could reasonably have avoided such a loss and has failed to sufficiently mitigate her loss, and on this basis, her application is dismissed.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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: January 25, 2018

Residential Tenancy Branch