



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IVANHOE HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC DRI MNDC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was represented by an advocate. The tenant acknowledged receipt of the landlord's 1 Month Notice on or about November 2, 2017 and he applied to cancel the notice. The landlord acknowledged receipt of the tenant's application.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss under the *Act*, particularly with regard to the rent increase regulations?

Is the tenant entitled to an order requiring the landlord to comply with the *Act* (regarding rent increases) and a determination on the rent increases imposed by the landlord to date?

Background and Evidence

This tenancy began approximately 10 years ago. There is no written rental agreement however the parties agree that the original rental amount was \$450.00 monthly. The tenant testified that he has never paid rent late. He testified that he has continued to pay \$470.00 in rent on or before the 1st of each month. The tenant provided copies of the receipts for rental payments from the landlord to the tenant. The landlord does not hold a security deposit from the tenant.

The landlord issued a 1 Month Notice to the tenant dated November 2, 2017 with an effective end of tenancy date of December 2, 2017. The landlord issued the notice to end tenancy relying on the ground that the tenant repeatedly pays rent late. The landlord acknowledges that the tenant pays \$470.00 on the 1st of each month however the landlord testified that the tenant's rent has been increased twice and the tenant is obliged to pay a larger amount of monthly rent.

Both parties agreed to the following undisputed facts regarding the rent;

- 2016: the tenant's rental amount was \$450.00 payable each month
- 2017: the landlord increased the tenant's rent to \$470.00 (January)
- 2018: the landlord increased the tenant's rent to \$488.00 (January)

The landlord testified that the tenant paid the increased rent amount from \$450.00 to \$470.00 in 2017. The landlord testified that the tenant never complained about the increase. He testified and submitted that, because the tenant's rent had not been increased for several years, he was entitled to increase the rent between 2016 to 2017 by an amount beyond the allowed annual rental increase amount under the Residential Tenancy Act and Regulation. The landlord also testified that, as the tenant paid the rental increase amount for more than three months, he should be considered to have accepted that increase.

The landlord also argued that the tenant is required to pay rent on the 28th of each month and therefore his payment of rent on the 1st of each month is late. The landlord was unable to provide a written agreement but relied on the rental increase form he had issued to the tenant as evidence of the date when the tenant's rent is due. The tenant's advocate argued that the fact that the landlord had filled in the rental increase form and that he handwrote the due date should be considered in making a determination about the amount of rent to be paid as well as the due date of the tenant's rent.

As well as cancellation of the 1 Month Notice, the tenant sought compensation for the additional (\$4.00 per month) he has paid in 'rent increases' since January 2017 to the date of this hearing.

Analysis

When a tenant applies to cancel a landlord's notice to end tenancy, the burden of proof shifts to the landlord to show that the notice to end tenancy was properly prepared, issued and that the reason for its issuance can be substantiated: the landlord must prove that his notice to end tenancy is valid.

The landlord sought to end this tenancy on the ground that the tenant had repeatedly paid rent late. The landlord relied on the tenant's failure to pay the rental increase amounts implemented to justify the claim that the tenant is repeatedly late in paying rent (or, more accurately, in paying full rent).

Section 26(1) of the Act establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There are very few circumstances that justify a tenant failing to pay rent in full and in accordance with the Act. That is the obligation of the tenant under the *Residential Tenancy Act*.

The landlord is also obliged to abide by the Act as well as the Residential Tenancy Branch Regulations. In this particular case, the tenant can only be found to have not complied with the rental payment provision of the Act if he was required to pay the amount of rent increase(s). If the landlord properly issued and served the tenant with notice of the rent increases and the rent increases were made in an amount that is allowable under the Residential Tenancy Act and Regulations, then the tenant is not entitled to dispute the rental increase.

The landlord argued that the tenant's payment of the rental increase from January 1, 2017 and on an ongoing basis was proof that he had accepted the rental increase imposed in January 2017. I refer the landlord to the Residential Tenancy Branch Policy Guidelines No. 37 and 38 regarding rent increases and repeated late payment of rent, respectively. As stated above, Policy Guideline No. 37 provides the steps the landlord must follow regardless of whether the tenant agrees to the rental increase,

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the

agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

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.

[emphasis added]

The tenant need not oppose the landlord's rent increase immediately and may feel obligated to pay the new, increased amount of rent. As in this case, the tenant's payment of rent and reluctance to say anything does not mean that the landlord can increase the rent without meeting his obligations. The tenant made his position with respect to the rent increases clear at this hearing.

The relevant provisions of the *Act* with respect to rent increases are as follows;

42 (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.

Pursuant to section 43 of the *Act*, the amount of a rent increase must be calculated in accordance with the Residential Tenancy Regulations, by order of a Residential Tenancy Branch arbitrator or by written agreement with the tenant.

While the tenant paid the rental increase from \$450.00 to \$470.00 in January 2017 to the date of this decision, I find that the rental amount was increased by an amount above and beyond the allowable rental increase for 2017. The allowable amount of increase would have been from \$450.00 to \$466.65. Based on the corrected amount of

rent owed in 2017, the landlord would have been allowed to increase the rent from \$466.65 to \$485.31 January 2018.

I find, based on all of the testimony and the landlord's failure to rectify the previous rent increase error and his failure to increase the rent in 2018 by the allowable annual amount, the tenant cannot be penalized for paying a lesser amount. It is the landlord's obligation to impose an annual rent increase that is within the allowable parameters as provided by the Residential Tenancy Branch. Given that the landlord failed to meet his obligations and therefore the tenant could not know the amount that he was required to pay and given that the tenant continued to pay an amount of rent to attempt to comply with a tenant's obligations under the Act, I find that the landlord has not proven that the tenant has paid rent repeatedly late.

I find, based on the testimony of both parties and landlord's failure to increase the rent in accordance with the Act, the tenant was under no obligation to pay this new rental amount of \$470.00 in 2017. For the entirety of 2017 (12 months), the tenant paid \$3.35 each month beyond the amount he was required to pay. Over the course of 2017, the tenant paid \$40.20 to the landlord as a result of the landlord's error.

The new rental amount for this tenancy will be \$485.00 and will come into effect on June 1, 2018. This effective date has been determined in consideration of the failure of the landlord to provide sufficient notice and the accurate amount of previous rental increases. This effective date allows for a period of 3 months' notice in accordance with the landlord's obligation on a rent increase.

The rental amount is determined in consideration of the landlord's actual allowable annual increases over the previous two years and in consideration, again of the landlord's failure to implement those increases in the correct amount. I determine the current rental amount for this tenancy based on the landlord's allowable amount for 2018. I will not repair the landlord's erroneous rental increases for two years. Therefore, as of **June 1, 2018**, the tenant will pay a total rental amount of **\$468.00** (a 4% increase from \$450.00).

As it is entirely the error or failure to comply with the Act by the landlord that resulted in the tenant's overpayment, I find that the tenant is entitled to recover the amount of the rental increase from January 2017 to January 2018. I have calculated a nominal amount owed to the tenant of \$40.20 (an overpayment of \$3.35 per month in 2017. I note that my decision has been made bearing in mind that the money paid in excess to the landlord has been unavailable to the tenant to use as he might require.

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy as the landlord based his issuance of the Notice on an inaccurate rental amount.

The tenant is entitled to \$40.20 in compensation from the tenant for an overpayment in rent. The landlord *must* ensure that he complies with the Act and meets his obligations as a landlord: the landlord will be entitled to increase rent 12 months from the effective date of this increase. The current rental amount of \$450.00 payable on the 1st of each month will increase to \$468.00 as of June 1, 2018.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy. The tenancy shall continue with a rental amount of \$450.00.

As of June 1, 2018, I declare that the monthly rental amount shall be \$468.00 payable on the first of each month.

I issue a monetary order to the tenant in the amount of \$40.20 against the landlord.

I advise the landlord to ensure compliance with the Act by knowing his obligations in residential tenancy transactions.

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: February 9, 2018

Residential Tenancy Branch