



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, MNDC, RP, FF

Introduction

The tenant applies to dispute a rent increase and for return of resultant rent overpayments. He also seeks an order that his stove be repaired or replaced.

Both parties attended the hearing, the landlord by his agent, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord imposed an unlawful rent increase, justifying a return of rent overpayments?
Has the landlord properly maintained the rental unit by correcting a faulty stove?

Background and Evidence

The rental unit is a one bedroom apartment in a 56 unit, four storey apartment building. The tenancy started in early 2009. The rent was originally \$760.00 per month. The landlord holds a \$380.00 security deposit.

The landlord has been faithful about annually imposing the annual rent increase permitted under Part 3 of the *Residential Tenancy Act* (the "Act"). However, in late 2010 the landlord sent the tenant (and many other tenants in the building) a note which read:

This is to notify you that your rent increase is 2.3% on a yearly basis.

This year as we did substantial up-dating of the building i.e. replacing windows, painting, balconies etc. The property tax, HST, water have also added to costs.

Currently the average rents in this area are as follows:

Batchelor	\$750-\$825
1 bedroom	\$875-\$950
2 bedroom	\$1,000-\$1,200

Our rents are lower than for comparable units in the building.

Your rent will be increased by the reasonable amount of \$40 + 2.3%.

If you are not in agreement with this increase it will have to be brought to the Residential Tenancy.

Accompanying the note was a standard Notice of Rent Increase form imposing a \$15.00 rent increase to the then rent of \$760.00 (an increase within the permitted percentage at that time) plus the \$40.00 addition, to a new rent of \$715.00 (plus \$25.00 for parking).

The tenant did not respond but began paying the new rent, including the \$40.00 addition, on the increase effective date of March 1, 2011.

Seven years later, when investigating the landlord's obligation regarding his stove, the tenant reviewed the rent increase provisions of the *Act*, and determined that he had been overpaying rent. He calculates an overpayment of \$40.00 per month to total \$3360.00 as of the date of his application.

The tenant also says that an element on his stove does not work, nor does the plug outlet on the stove, nor is the temperature dial accurate in the least.

In response the landlord's agent testifies that the tenant agreed to the \$40.00 increase back in 2011. Had he not agreed, the landlord would have made an application pursuant to s. 43 of the *Act* for an increase in excess of that permitted annually.

She says that the tenant has been offered two stove replacements but has refused them, turning away the deliverymen.

The tenant responds that the landlord offered only one stove and it was even older than the one it was to replace, so he refused it.

Analysis

The 2011 Rent Increase

The *Act* currently and back in 2011 prohibits a landlord from imposing a rent increase in excess of an annually prescribed percentage of rent. In the year 2011, that percentage was 2.3%.

In 2010 and 2011 the *Act* permitted a landlord to apply for an additional rent increase where

- a) the rent for the rental unit was significantly below rents for similar units in the area (this provision was repealed in 2017), or
- b) the landlord had completed significant repairs or renovations to the residential property in which the rental unit is located that
 - (i) could not have been foreseen under reasonable circumstances, and
 - (ii) would not recur within a time period that is reasonable for the repair or renovation; or
- (c) the landlord had incurred a financial loss from an extraordinary increase in the operating expenses of the residential property; or
- (d) the landlord, acting reasonably, had incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances; or
- (e) the landlord, as a tenant, had received an additional rent increase under this section for the same rental unit.

Had the tenant investigated the law or his rights as a tenant when he received the Notice of Rent Increase and the accompanying note, he would have been aware that the landlord could not unilaterally impose the \$40.00 increase except with his consent or after convincing a Residential Tenancy arbitrator that the increase was justified under any of the five grounds listed above. The tenant would have been notified of that hearing and been given a full opportunity to object to any additional rent increase.

The question is whether the tenant agreed to the \$40.00 increase or not. Silence itself is not acceptance, however, I find that by failing to respond to the note and proceeding to pay the \$40.00 increase, he accepted the landlord's proposal; declining to require the landlord to make an application for an additional rent increase.

It follows that there has not been an unlawful increase and that there has not been any rent overpayment that the tenant might recover.

The Stove

The evidence satisfies me that the stove in the tenant's rental unit is defective. I do not consider it necessary to determine whether or not the landlord has offered a reasonable replacement(s) or whether the tenant has been unreasonable about it.

I direct and order that within the next thirty days the landlord either a) have a qualified tradesman repair the stove so that all four elements work properly, the plug on the stove top is functional and the oven temperature dial work to within ten degrees Fahrenheit of the actual oven temperature, or b) replace the stove with an equivalent, fully working stove, white in colour and no more than ten years old.

Conclusion

The tenant's application for recover of rent paid under an unlawful rent increase is dismissed.

The tenant's application regarding the stove is allowed.

I direct and order that within the next thirty days the landlord either a) have a qualified tradesman repair the stove so that all four elements work properly, the plug on the stove top is functional and the oven temperature dial work to within ten degrees Fahrenheit of the actual oven temperature, or b) replace the stove with an equivalent, fully working stove, white in colour and no more than ten years old.

As the tenant has been partially successful I allow him recovery of \$50.00 of the filing fee. I authorize him to reduce the May 2018 rent by \$50.00, in full satisfaction of the fee.

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: March 28, 2018

Residential Tenancy Branch