



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, ERP, MNDC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 43 of the *Residential Tenancy Act* (the “Act”) disputing a rent increase and for Orders as follows:

1. An Order for emergency repairs - Section 43;
2. An Order for the Landlord’s compliance - Section 62; and
3. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirmed that the tenancy has ended. As the tenancy ended and as the claim in relation to emergency repairs and the Landlord’s compliance are only relevant to an ongoing tenancy I dismiss these claims. The Tenant confirms that the only claim being pursued is the claim for the return of increased rents paid.

Issue(s) to be Decided

Did the Landlord increase the rent in accordance with the Act’s requirements?

Is the Tenant entitled to return of any of the rents paid during the tenancy?

Background and Evidence

The following are agreed facts: The tenancy started on March 11, 2016 with monthly rent of \$600.00 payable on the 11th day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit. The Tenants moved out of the unit on March 1, 2018. The Landlord verbally increased the rent to \$650.00 to start March 11, 2017 and verbally increased the rent to \$700.00 to start May 11, 2017. The Tenant paid the increased rent amounts.

The Tenant states that it never agreed to any rent increase and never agreed in writing to any rent increase. The Tenant claims \$700.00 as the return of the rent increases paid over the original monthly rent of \$600.00.

The Landlord states that the Tenant's mother moved into the unit so the Landlord asked the Tenant to move out of the unit as it was too small. The Landlord states that the Tenant verbally offered to pay extra rent. The Landlord states that the Tenant only had problems with the rent increases after January 2018 when the Landlord verbally asked the Tenant to move out of the unit as the Landlord needed the unit. The Tenant states that it only agreed to pay the increases after the Landlord said the Tenant had to pay the increase or move out. The Tenant states that the Landlord also told the Tenant that the rent would increase again to \$900.00 and if the Tenant did not agree then the Tenant would have to move out of the unit. The Landlord states that there was a mutual understanding about the rental increases. The Landlord states that the Tenant did not pay any rent for February 2018.

Analysis

Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount, inter alia, calculated in accordance with the regulations or as agreed to by the tenant in writing. The allowable rent increase for 2017 as allowed under the Regulations was 3.7%. Based on the undisputed evidence that the original rent payable

was \$600.00 I find that the Landlord could only increase the rent in 2017 by \$22.20. There is no evidence that the Tenant agreed in writing to pay a higher amount.

Section 42 of the Act provides, inter alia,

- that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
 - if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
 - if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act; and
- that a notice of a rent increase must be in the approved form.

Section 43(5) of the Act provides that 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. Based on the undisputed evidence that the Landlord did not have the Tenant's agreement in writing for any rental increase, that the Landlord increased the rent twice within one year, that the increases were above the allowable amount, and that the Landlord did not serve any notice of rental increase on the approved form I find that the Tenant may recover rents paid over \$600.00 per month to the maximum amount claimed of **\$700.00**. I calculate that the Tenant overpaid a total of \$1,000.00 based on \$50.00 overpayments for each of March and April 2017 plus \$100.00 overpayments for each month from May 2017 to January 2018 inclusive (2 months x 50.00 + 9 months x 100.00). I do not include any calculation for February 2018 based on the Landlord's undisputed evidence that the Tenant did not pay rent for February 2018. I restrict the Tenant's entitlement to **\$700.00** as this is the total amount set out as being claimed in the application.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$700.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 26, 2018

Residential Tenancy Branch