



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: DRI, MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$3596.
- b. An order that the landlord comply with the Act, regulation or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing April 5, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to recover a rent increase charged by the landlord that failed to comply with the Act and Regulations and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 19, 2013. The rent was \$1450 per month payable in advance on the 15th day of each month. The tenants paid a security deposit of \$725 at the start of the tenancy.

On November 15, 2015 the tenants rented the basement suite for an additional \$650 per month. This brought the monthly rent to \$2100 per month.

The landlord testified he had previously rent the basement suite for \$750 per month and the tenants had failed to pay \$100 per month since November 15, 2015.

In 2016 that landlord orally demanded the tenants pay an additional \$250 per month commencing June 15, 2016. The tenants paid the additional sum as they feared the landlord would end the tenancy. The landlord did not give them a Notice of Rent Increase in the approved form and the amount of rent increase exceeded the amount the landlord was permitted to charge under the Residential Tenancy Act and Regulations.

The tenants' credited the landlord with what he could have charge had he followed the Regulations. Thus they reduced their claim by 2.9% for the first 12 months and a further 3.77% for the 9 months ending March 15, 2018. The tenants demanded the refund of the following:

- \$205.90 (\$250 - \$44.10 being the increase the landlord could have charged =\$205.90) for a total of \$2470.80 for the period July 15, 2016 to June 15, 2017)
- \$125.07 for the 9 month commencing July 15, 2017 to March 15, 2018 for a total of \$1125.63.
- The total refund claimed is \$3596.40.

The tenants have not paid the rent for the period April 15, 2018 to May 14, 2018. In addition the tenant stated they owe a portion of a Fortis bill dated March 8, 2018 in the sum of \$186.82. These sums should be deducted from their claim.

Section 41 to 43 of the Residential Tenancy Act includes the following:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

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.

Amount of rent increase

- 43** (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.

Analysis:

I do not accept the evidence of the landlord that the tenants agreed to pay an additional al \$750 per month for the basement suite. I accept the evidence of the tenants that the parties agreed to the additional sum of \$650 per month thus increasing the rent to \$2100 per month.

I determined the landlord's demand of a rent increase of \$250 per month did not comply with the Act and as such it amounts to an illegal rent increase. Section 41 provides that a landlord must not increase the rent except in accordance to this part. The landlord failed to use the approved form and any form of writing for that matter. Section 43(5) provides that if a landlord collects a rent increase that does not comply with this part the tenant may deduct the increase from the rent or otherwise recover the increase.

The tenants Application for Dispute Resolution credits the landlord credit for rent increases he could have charged had he followed the regulations. I determined there was no basis in law for this credit. Had the landlord served a Notice of Rent Increase in the approved form that demanded a rent increase that exceeded what is permitted I could have ordered the rent increase be reduced to reflect what was permitted. However, in this case the landlord failed to use an approved form at all. The law does not recognize a rent increase that was brought about through an oral demand and the rent remains at \$2100 per month. Thus the tenants are entitled to recover the \$250 per month for 21 months from July 15, 2016 to and including March 15, 2018 or the sum of \$5250 (\$250 per month x 21 months = \$5250). The rent remains at \$2100 per month as it has not been properly increased.

The tenants are entitled to \$5250. They have not paid the rent for the period April 15, 2018 to May 14, 2018 and the sum of \$2100 should be deducted. In addition the tenants stated I should deduct their share of the Fortis bill dated March 8, 2018 in the sum of \$186.68. I determined the tenants are entitled to a monetary order to recover the sum of \$2963.32 plus \$100 for the cost of the filing fee for a total of \$3063.32 after these set-offs are deducted. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3063.32.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: May 10, 2018

Residential Tenancy Branch