Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD DEVELOPMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act,* pursuant to section 67; and
- repayment of the filing fee pursuant to section 72.

The tenant and the landlord's property managers attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issues

The tenant testified that she served the landlord the notice of dispute resolution package by registered mail sometime in the first two weeks of May 2018. The tenant did not provide the Canada Post Tracking Number to confirm this registered mailing; however, property manager R.S. (the "landlord") testified that he received the dispute resolution package by registered mail in the first two weeks of May 2018. I find that the landlord was served with this package in accordance with section 89 of the *Act.*

The landlord testified that the dispute resolution package he received from the tenant included the Applicant's instructions for dispute resolution, not the Respondent's instructions. However, the landlord further testified that he was still able to review and respond to the tenant's claims and did not object to the hearing continuing on its merits. Based on the landlord's testimony, I find that the landlord was not unduly prejudiced by

receiving the wrong dispute resolution instructions and that this hearing will continue on its merits.

At the beginning of the hearing it became clear that the landlord's name on the application was incorrect and that the tenant's address was missing the unit number. Both parties agreed to amend the proceedings to state the landlord's correct name and to include the unit number on the rental property in question. Pursuant to section 64 of the *Act*, I amended the proceedings to reflect the correct landlord name and address of the tenant.

As per the application materials, the tenant applied for a monetary order for damage or compensation under the *Act*, but did not specifically apply to dispute a rent increase from the landlord. However, based on the evidence provided and the testimony of both the tenant, the landlord, and property manager A.A., both parties are aware that the tenant is disputing the Notice. In the Notice of Dispute Resolution served on the landlord, the tenant made the following claim:

> "Landlord is saying that they gave me notice of a rental increase which I did not receive. I have asked for a receipt showing that notice was sent but they do not have one. [Sent by mail] I only have their word that it was sent and they have my word that it was not. To date only 80.00 increase has been paid by me but the longer this takes to resolve the more money I am asking for. I believe that my 3 month notice should start as of Aug.1/2018"

I find that the landlord knew or ought to have known that the tenant was disputing the Notice. I find that the landlord is not unduly prejudiced by amending the tenant's claim to add disputation of the Notice. In accordance with section 64 of the *Act*, I amend the tenant's claim to include disputation of the Notice, pursuant to section to section 41 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act,* pursuant to section 67 of the *Act*?
2. Is the tenant entitled to cancel the rent increase, pursuant to section 41 of the *Act*?
3. Is the tenant entitled to repayment of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2015 and is currently ongoing. The original tenancy agreement set monthly rent in the amount of $2,000.00 payable on the first day of each month. A security deposit of $1,000.00 and a pet damage deposit of $1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Property manager A.A. testified that on January 26, 2018 she sent the tenant a Notice of Rent Increase (the "Notice") via regular mail. The Notice states that the current rent is $2,000.00, the rent increase is $80.00, and the new rent will be $2,080.00 starting on May 1, 2018. The Notice was entered into evidence.

The tenant testified that she did not receive the Notice and therefore should not have to pay the rent increase as she did not have the three months' notice required under the *Act*. The tenant is seeking re-imbursement of the rent increase in the amount of $80.00 paid on the first of each month starting May 1, 2018. The tenant did not submit any documents into evidence.

The landlord testified that over 20 other notices of rent increase were sent out to other tenants on January 26, 2018, none of whom informed the landlord that the notice of rent increase was not received.

Both parties agree that the tenant has paid the rental increase since May 1, 2018.

Analysis

Section 42(2) of the *Act* states that a landlord must give a tenant notice of a rent increase at lease three months before the effective date of the increase.

Section 88 of the *Act* states that a notice of rent increase may be served on a tenant by sending a copy by ordinary mail or registered mail to the address at which the tenant

resides. Section 90 of the *Act* states that a document given or served in accordance with section 88 of the *Act*, is deemed to be received, if given or served by mail, on the 5th day after it is mailed.

In this case, the property manager A.A. testified that she mailed the Notice via regular mail on January 26, 2018. I accept the testimony of property manager A.A. and find that the Notice was mailed via regular mail on January 26, 2018. Pursuant to section 90 of the *Act*, the Notice was deemed received by the tenant on January 31, 2018, five days after its mailing. I find that the Notice was in the approved form and provided the required three months' notice in accordance with section 42 of the *Act.* I find that the rent increase is effective as of May 1, 2018.

While the tenant testified that she did not receive the Notice, she did not provide sufficient evidence to rebut the deeming provisions found in section 90 of the *Act*. I therefore dismiss the tenant's application without leave to reapply.

As the tenant was not successful in her application, pursuant to section 72, I find that she is not entitled to recover the filing fee for this application.

Conclusion

The tenant's application is dismissed 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: June 18, 2018

Residential Tenancy Branch