



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

The tenants apply to set aside four rent increases imposed since 2013 and to recover their overpayment of rent.

The listed parties attended the hearing 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 rent increases that were not in accordance with the *Residential Tenancy Act* (the “Act”)? Are the tenants entitled to return of rent overpayments?

Background and Evidence

The rental unit is one side of a duplex. It is composed of four levels, including a self contained suite in the lowest level. The tenancy started in August 2012. The initial rent was \$1000.00 per month. The landlord holds a \$500.00 security deposit.

Starting effective October 1, 2013, the landlord imposed four rent increases. In 2013 the rent was raised by \$50.00. In 2014 the increase was another \$50.00. In 2015 it was \$100.00 and effective April 1, 2018 the fourth increase, another \$100.00 increase was imposed.

The tenants paid the increases. With the last one, they balked and brought this application.

The landlord does not dispute that the increases were over that allowed as a maximum annual increase under the *Act* and Regulation. He says that his costs have gone up. As well, the tenants are renting out the self-contained suite in the lower portion of the rental unit and have roommates in the upper portion. It appears that the money the tenants are bringing in from the tenant below and the roommates significantly exceeds the rent.

Analysis

Part 3 of the *Act* provides that a landlord may increase rent annually by a percentage amount up to that set by regulation under the *Act*. If the increase is at or below that permitted percentage, a tenant is not permitted to challenge it. Part 3 provides that rent may only be increased by this method or by the landlord making a formal application for an extraordinary rent increase. The Part provides that if a landlord collects a rent increases that does not comply, then a tenant may deduct the increase from rent.

The parties here agree that the percentage amounts were 3/8% in 2013, 2.2% in 2014, 2.5% in 2015 and 4.0% in 2018. Each of the landlord's rent increases exceeded the relevant percentage increase.

It is apparent that none of the four rent increases complied with Part 3 of the *Act*. As they have not been given in accordance with Part 3 of the *Act* they are of no force or effect.

The tenants seek to recover only that portion of the rent paid in excess of each year's lawful increase percentage; an amount of \$4105.76. I find that they are entitled to recover that money.

The landlord did not present a tenancy agreement imposing any restrictions on the tenants' use of the premises and particularly, the use of the lower suite. It is my view that if a landlord rents accommodation that includes a self contained suite and imposes no restrictions, in is implicit that the tenants may use that self contained suite by renting it out themselves. Similarly, if a landlord rents a four bedroom accommodation to two people, unless the tenancy agreement somehow restricts the tenants, it is implicit that others in addition to the tenants may be residing there, whether as family, as guests or as roommates.

Conclusion

The tenants' application is allowed. They are entitled to a monetary award of \$4105.76 plus recovery of the \$100.00 filing fee. They will have a monetary order against the landlord in the amount of \$4205.76. If they wish, they may offset that award against future rent as it comes due.

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 19, 2018

Residential Tenancy Branch