



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, MNDCT, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- disputation of a rent increase, pursuant to section 41; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's advocate testified that the landlord was served the notice of dispute resolution package by registered mail on June 15, 2018. The tenant's advocate provided the Canada Post Tracking Number to confirm this registered mailing. The property manager (the "landlord") confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on June 20, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Service of Amendments

Both parties agreed that the tenants' first amendment package was filed with the Residential Tenancy Branch (the "RTB") and served on the landlord in person on July 19, 2018. Both parties agreed that the second amendment package was served on the landlord in person on August 2, 2018. The tenants' second amendment was uploaded as evidence, but was not filed with the RTB.

The tenant's original application which was filed on June 8, 2018 sought compensation for an alleged illegal rent increase for the month of June 2018. The tenant's first amendment sought compensation for that rent increase for the months of June and July 2018. The tenant's second amendment sought compensation for that rent increase for the months of June, July and August 2018.

I find that the first amendment was properly filed with the RTB and served on the landlord, in accordance with section 88 and 89 of the *Act* and in accordance with section 4.3 of the Residential Tenancy Rules of Procedure (the "Rules").

I find that the second amendment was not filed with the Residential Tenancy Branch and while served in accordance with section 88 and 89 of the *Act*, it was not served at least 14 days before the hearing in accordance with sections 4.3 and 4.6 of the Rules.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the tenant is seeking compensation for payment of the alleged illegal rent increase for each month that he paid it, should have been reasonably anticipated by the landlord. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the tenants' application to include a monetary claim for the alleged illegal rent increase for the month of August 2018, in addition to the months of June and July 2018.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to dispute the rent increase, pursuant to section 41 of the *Act*?
4. Are the tenants entitled to recover the filing fee for this application from the landlord, 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2015 and is currently ongoing. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that on November 29, 2017 the landlord posted a Notice of Rent Increase on the tenants' door with an effective date of April 1, 2018 (the "First Notice"). Tenant G.C. (the "tenant") testified that he received the First Notice on November 29, 2017. The First Notice stated the following information:

Current rent: \$832.76

Increase: \$33.31

New rent: \$866.07.

Both parties agree that on February 27, 2018 the landlord posted a Notice of Rent Increase on the tenants' door with an effective date of June 1, 2018 (the "Second Notice"). The tenant testified that he received the Second Notice on February 27, 2018. The Second Notice stated the following information:

Current rent: \$832.76

Increase: \$467.24

New rent: \$1,300.00.

Both parties agree that on June 1, 2018, the tenants paid the landlord \$866.00. Both parties agree that on June 3, 2018 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of June 12, 2018 (the "10 Day Notice") on the

tenants' door. The 10 Day Notice stated that the tenants failed to pay \$434.00 on June 1, 2018 when it was due. The tenant testified that he received the 10 Day Notice on June 3, 2018.

Both parties agreed that the tenants paid the landlord \$434.00 on June 6, 2018. Both parties agreed that the tenant has paid rent in the amount of \$1,300.00 per month for July and August 2018.

The owner testified that he was raising the rent up to \$1,300.00 for the following reasons:

1. tenant W.C. moved into the property in 2011 without the landlord's permission;
2. the landlord had to repair the tenants' bathroom: the landlord alleges the damage was caused by the tenants' negligence; and
3. property taxes and insurance rates are increasing.

The tenant's advocate argued that the landlord breached section 43 of the *Act* by increasing the rent by a greater amount than that permitted by section 22 of the Regulation.

The tenants are seeking the following:

Item	Amount
June overpayment	\$434.00
July overpayment	\$434.00
August overpayment	\$434.00
Filing Fee	\$100.00
Postage	\$12.55
TOTAL	\$1,414.55

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served by posting the document on the door of the residential address at which the person resides. I accept

the tenant's evidence that he received the 10 Day Notice on June 3, 2018 and find that service was effected on June 3, 2018.

Section 42 of the *Act* states that a landlord must not impose a rent increase for at least 12 months after the effective date of the last rent increase made in accordance with this *Act*.

I find that the landlord breached section 42 of the *Act* by issuing two notices of rent increase within 12 months after the effective date of the First Notice, that being April 1, 2018. As such I find that the Second Notice is of no force or effect.

Section 43 of the *Act* states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations. Section 22 of the Residential Tenancy Act Regulations states that a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

The online Residential Tenancy Branch rent increase calculator states that the maximum rental increase on a rent of \$832.76 is \$33.31. I find that the Second Notice increases the rent of the tenant over the maximum amount permitted under section 43 of the *Act*. I again find that the Second Notice is of no force or effect due to the contravention of section 43 of the *Act*.

Since the Second Notice is of no force or effect, I find that the 10 Day Notice is of no force or effect because the tenant paid his rent in full on June 1, 2018. A 10 Day Notice cannot succeed when it is issued due to the tenant's refusal to pay an illegal rent increase.

The owner testified that he increased the rent due to the cost of renovations that were recently performed in the rental property, the presence of the tenant's brother, and increased property taxes and insurance rates. Increased costs and an additional occupant do not allow the landlord to increase rental rates in contravention of the *Act*.

Since the Second Notice is of no force or effect, I find that the tenant is entitled to receive \$434.00 for each month of June, July and August 2018.

Since the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee for this application, pursuant to section 72.

The only recoverable cost associated with preparing for and attending this hearing is the \$100.00 filing fee, as such I dismiss the tenants' claim for the cost of postage.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
June overpayment	\$434.00
July overpayment	\$434.00
August overpayment	\$434.00
Filing Fee	\$100.00
TOTAL	\$1,402.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 07, 2018

Residential Tenancy Branch