



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

Introduction

On August 17, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “*Act*”), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 9, 2018, the Tenants amended their Application to increase the amount of monetary compensation they were seeking.

The Tenants attended the hearing and the Landlord attended the hearing as well, with A.W. acting as his agent. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and evidence by registered mail to the Landlord on August 18, 2018 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package and the evidence.

The Tenants advised that they served their amendment to the Landlord on November 14, 2018 and the Landlord confirmed that he received this package. Based on this undisputed testimony, I am satisfied that the Landlord was served with the amendment.

The Landlord advised that he served his evidence to the Tenants on December 7, 2018 by hand and the Tenants confirmed receipt of it. Based on the undisputed testimony, I am satisfied that service of all evidence complied with the Rules of Procedure and that the hearing could proceed

accordingly. I have accepted and considered the submitted evidence of both parties when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Are the Tenants entitled to compensation for overpayment of rent due to an illegal rent increase?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the Landlord purchased the rental unit, and a new tenancy agreement was subsequently signed with the Tenants on July 15, 2015 for a fixed length of time of one year, ending July 15, 2016. Rent was established at \$1,500.00 per month, due on the first of each month. A security deposit of \$700.00 was also paid. A copy of this tenancy agreement was submitted into evidence. The Tenants submitted that with this new tenancy agreement, the Landlord illegally increased rent from the \$1,400.00 per month that they were paying under the old tenancy agreement with their previous landlord.

Furthermore, they stated that the Landlord approached them in April 2016 and asked to increase the rent to \$1,600.00 per month; however, they declined this and advised the Landlord of the requirements of the *Act* with respect to rent increases. The Landlord advised them that the rent would be \$1,560.00 per month on August 1, 2016 and the Tenants paid this amount of rent going forward.

They advised that the Landlord then presented a new tenancy agreement that both parties signed on December 11, 2016. This new tenancy started on February 1, 2017 as a month to month tenancy and rent was established at \$2,000.00 per month. The Tenants signed this new agreement as the Landlord had a notice to end tenancy in his other hand and had been constantly intimidating them, stating that he could get more rent. The original security deposit of \$700.00 was transferred from the original tenancy. A copy of this last tenancy agreement was submitted into evidence.

Both parties agreed that the tenancy ended on October 6, 2018 as the Tenants provided ten days written notice, on September 19, 2018, to vacate the rental unit early after the Landlord served them a Two Month Notice to End Tenancy for Landlord's Use of Property at the end of August 2018.

The Tenants submitted that the Landlord illegally increased the rent 42.86% over an 18- month period of time and that they are seeking compensation for overpayment of rent over the course of the entire tenancy. They are seeking compensation in the amount of **\$500.00** from August 1, 2015 to December 31, 2015, **\$1,297.00** from January 1, 2016 to December 31, 2016, **\$6,272.80** from January 1, 2017 to December 31, 2017, **\$4,475.20** from January 1, 2018 to August 31, 2018, and **\$559.40** from September 1, 2018 to September 30, 2018. The total compensation they are seeking is **\$13,104.40**.

The Landlord stated that the Tenants advised him prior to signing the first tenancy agreement in July 2015 that the rent increase did not comply with the requirements of the *Act*, but they signed it anyways. The Landlord then referenced a Notice of Rent Increase form that he submitted as documentary evidence that increased the rent to \$1,560.00 per month on August 1, 2016, going forward.

Later, the Landlord advised that because the Tenants' rent was so low, he would have to move into the rental unit and the Tenants asked him not to serve a notice to end their tenancy. The Landlord then presented the Tenants with a new tenancy agreement on December 11, 2016 and the Tenants signed this, agreeing to the new amount of rent of \$2,000.00 per month as of February 1, 2017.

The Landlord advised that he was served a Two Month Notice to End Tenancy for Landlord's Use of Property on August 1, 2018 by his landlord, so he in turn then served the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property on August 26, 2018. He then referenced a set of proposals suggested by the Tenants, that were submitted as documentary evidence, which demonstrated that the Tenants were aware of the requirements of the *Act* with respect to rent increases and that these were attempts by the Tenants to contract outside of the *Act*.

He advised that he tried to accommodate the Tenants' needs, and that the tenancy agreements that were signed were created in consideration of their needs and requests. He stated that these tenancy agreements were brand new contracts that the Tenants clearly and knowingly agreed to, especially given that the Tenants were aware of the requirements of the *Act* with respect to rent increases. The Landlord submitted that the Tenants should have disputed the rent increases before if they believed they were illegal rent increases.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenants' rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenants notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable rent increases:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

When reviewing the Tenants' claims for compensation due to their allegations of illegal rent increases, I find that the Tenants' claim of the rent increase from \$1,400.00 to \$1,500.00 is unfounded. The evidence before me is that the Tenants had a tenancy agreement in place with the previous owner of \$1,400.00 per month, and when the rental unit was sold to the Landlord, the parties signed a brand-new tenancy agreement at \$1,500.00 per month. Signing this brand-new tenancy agreement was not necessary as the Landlord would have simply assumed the existing tenancy agreement that was in effect prior to his ownership of the rental unit. Signing a new agreement constitutes a brand-new agreement with new terms. As such, I am satisfied that this new agreement is not subject to the rent increase requirements of the *Act* and I dismiss the Tenants' claims for \$500.00.

With respect to the Tenants' next claim, the undisputed evidence before me is that this new tenancy agreement commenced on July 15, 2015 with rent being established at \$1,500.00 per month. The earliest the Landlord could have imposed a rent increase is 12 months after the rent was first payable. In order to do so, the Landlord must also have given the Tenants a notice of a rent increase at least 3 months before the effective date of the increase and used the approved form. Based on testimony of both parties and the evidence before me, I am satisfied that the Landlord complied with the *Act* with respect to the timing and provision of the Notice of the Rent Increase form, effectively increasing rent for August 1, 2016.

However, the Landlord increased the rent from \$1,500.00 to \$1,560.00 and the allowable rent increase for 2016 was 2.9%. As such, the maximum allowable rent increase for 2016 would have been to \$1,543.50. Therefore, I find that the Landlord charged an excess \$16.50 per month more than he was permitted.

Furthermore, while there was no requirement to sign a new tenancy agreement, the parties then signed a brand-new agreement commencing February 1, 2017 where rent was then established at \$2,000.00 per month. As this was a new agreement, with new terms, I am satisfied that the requirements of the *Act* with respect to rent increases do not apply as the Tenants knowingly signed and agreed to the terms of this new tenancy when not required. Consequently, I find that the rent of \$2,000.00 from February 1, 2017 to the end of tenancy is the amount that the Tenants agreed to pay for the remaining balance of their tenancy. As such, I dismiss their claims for compensation for this period of time.

However, as I have determined above that the Landlord charged a rent increase of \$16.50 per month over the maximum allowable rent increase for 2016, I find that the Tenants have established a claim of \$16.50 per month from August 1, 2016 to January 31, 2017. As such, I grant the Tenants a monetary award in the amount of **\$99.00** for these six months.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Rent overpayment for six months	\$99.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$199.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$199.00** 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: January 14, 2019

Residential Tenancy Branch