



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

Introduction

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

- an order regarding a disputed rent increase, pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, tenant AW ("tenant") and "tenant AL" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 36 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

Issues to be Decided

Are the tenants entitled to an order regarding a disputed rent increase?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover their filing fee for this application from the landlord?

Background and Evidence

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

Both parties agreed to the following facts. A tenancy between the landlord, the tenant and another "occupant RS" began on October 1, 2017 as per a written tenancy agreement for a fixed term ending on March 31, 2018, after which those tenants were required to vacate the rental unit ("first tenancy agreement"). A written sublease agreement was signed between occupant RS and tenant AL from December 1, 2017 to March 31, 2018, whereby occupant RS vacated the rental unit and tenant AL moved in to the rental unit ("sublease agreement"). A written tenancy agreement between the landlord, the tenant and tenant AL ("current tenancy agreement") was signed beginning on April 1, 2018 for a fixed term ending on September 30, 2018, after which the tenants were required to vacate the rental unit but due to the fixed term tenancy law changes, it continued as a month-to-month tenancy. The two tenants continue to reside in the rental unit. Monthly rent of \$2,000.00 is payable on the first day of each month as per the current tenancy agreement.

Both parties agreed that the landlord issued a Notice of Rent Increase, dated August 31, 2018 ("NRI") to the tenants in person on September 11, 2018. The NRI attempts to increase the tenants' rent by 4% at \$80.00 per month, from \$2,000.00 to \$2,080.00 per month, effective on December 1, 2018. Both parties agreed that the landlord refunded \$32.00 to the tenants from the December 2018 rent payment of \$2,080.00 because he prorated the rent increase of \$80.00 since the NRI was served late to the tenants on September 11, 2018, less than three months prior to it taking effect on December 1, 2018. The landlord claimed that he made the NRI effective December 12, 2018, to account for this three month notice.

Both parties agreed that the tenants paid the additional \$80.00 monthly rent increase to the landlord for a total monthly rent of \$2,080.00 for December 2018 and January 2019 rent, which were both accepted by the landlord. Both parties agreed that the tenants' February 2019 e-transfer of \$2,080.00 total, was received but not yet accepted by the landlord, who said that he would wait for the outcome of this decision.

The landlord said that since tenant AL moved in on December 1, 2017, and the tenant was already living there, he is entitled to increase the tenants' rent after one year, which is December 1, 2018. He said that under the first tenancy agreement and the current tenancy agreement, the rent was the same at \$2,000.00 and he never increased it. He claimed that although he gave less than three months' notice to the tenants as per the NRI service date, the tenants agreed in writing, over text messages which he did not provide for this hearing, that they would pay rent of \$100.00 to \$200.00 more per month. The landlord explained that since the tenants requested a formal document from him, he issued the NRI to them.

The tenants dispute the landlord's NRI and rent increase of \$80.00 per month, claiming that they have a current tenancy agreement that began on April 1, 2018, which includes both their names as tenants at a rent of \$2,000.00 per month. They said that the landlord could have increased their rent by way of the current tenancy agreement but chose to include the same amount of rent at \$2,000.00 per month. They claimed that the earliest the landlord can increase their rent is April 1, 2019 at 2.5%, which is one year after their current tenancy agreement came

into effect on April 1, 2018. They said that they discussed different potential rent amounts with the landlord via text message but they did not know the law and then spoke to the Residential Tenancy Branch ("RTB"). They stated that the landlord's NRI was not given with three months' notice, in any event, because they received it on September 11, 2018.

The tenants seek a monetary order of \$208.00 total. They seek a refund of the rent overpayment of \$80.00 per month as per the NRI. They seek the remaining \$48.00 from December 2018, \$80.00 from January 2019 and \$80.00 from February 2019, in the event that the landlord accepts their February 2019 rent payment.

Analysis

Rent Increase

I allow the tenants' application to dispute the landlord's rent increase of \$80.00 per month and I cancel the landlord's NRI, dated August 31, 2018.

I order that the rent for the tenants' rental unit remains at \$2,000.00 per month for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

The first tenancy agreement and the sublease agreement have already been completed as per their fixed terms. Occupant RS moved out of the rental unit. The two tenants and the landlord signed a new written tenancy agreement (current tenancy agreement), which indicated a tenancy start date of April 1, 2018 at \$2,000.00 per month. Both parties had the ability to change the amount of rent in this current agreement but chose to leave it the same at \$2,000.00 per month.

Therefore, the landlord's attempt at raising the rent as of December 1, 2018, is an illegal rent increase since it was imposed less than 12 months after the parties started their current tenancy agreement on April 1, 2018. The landlord can only raise the rent once every 12 months by the allowable *Regulation* amount as per section 42(1) of the *Act*.

Therefore, the earliest date that the landlord can raise the tenants' rent for this tenancy is April 1, 2019. However, the landlord must still provide a new, correct RTB notice form in accordance with the notice provisions, as well as comply with the *Regulation* amount for the applicable year of the rent increase.

Accordingly, I find that the tenants are entitled to a refund for their overpayment in rent of \$48.00 for December 2018 and \$80.00 for January 2019, for a total of \$128.00.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order that the rent for the tenants' rental unit remains at \$2,000.00 per month for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

I order the tenants to reduce their rent payable to the landlord by \$228.00 from future rent payable at the rental unit for this tenancy, to account for the filing fee of \$100.00 and the rent reimbursement of \$128.00.

If the landlord accepts the tenants' rent of \$2,080.00 for February 2019, I allow the tenants' to reduce their rent payable to the landlord at the rental unit for this tenancy by another \$80.00 to account for the overpayment for February 2019 rent. If the landlord does not accept this rent, I order the tenants to pay only \$2,000.00 for February 2019 rent to the landlord and in that case, the tenants are not entitled to an additional refund of \$80.00 for this month.

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 29, 2019

Residential Tenancy Branch