



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M&R Whistler Superior Hold Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FF

Introduction

This hearing was convened in response to applications for dispute resolution made by three Tenants, each in separate units, as follows:

1. disputing a rent increase pursuant to section 42 and 43 of the *Residential Tenancy Act* (the “Act”); and
2. seeking recovery of the respective filing fee pursuant to section 72 of the Act.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the Tenants receive rent increases that are not in accordance with the Act?

Are the Tenants entitled to return of any rents paid?

Are the Tenants entitled to recovery of their respective filing fees?

Background and Evidence

The following are undisputed facts:

The tenancy for unit #1 started June 1, 2014 with rent of \$900.00 payable on the first day of each month. The Landlord increased this rental amount to \$1,050.00 effective July 1, 2019 without setting the increase out on an approved Residential Tenancy Branch (the “RTB”) form. The Landlord served the Tenant with another rental increase to \$1,000.00 effective July 1, 2019 again without setting the increase out on an approved RTB form. The Landlord served the rental increase for \$1,000.00 to replace

the previous rental increase to \$1,050.00. The Tenant agrees to the rental increase of \$1,000.00 as of July 1, 2019 and the Landlord accepts the rental increase to \$1,000.00. The Tenant paid \$1,000.00 for July 2019 rent.

The tenancy for unit #5 started February 15, 2013 with rent of \$1,000.00 payable on the first day of each month. The Landlord increased the rent to \$1,100.00 effective March 1, 2018. The Tenant does not dispute this increase. On April 1, 2019 the Landlord served the Tenant with a notice of rental increase to \$1,150.00 effective July 1, 2019 without setting the increase out on an approved RTB form. On July 3, 2019 the Landlord served the Tenant with another rental increase to \$1,130.00 effective July 1, 2019 again without setting the increase out on an approved RTB form. The Tenant is disputing the last two increases of \$1,150.00 and \$1,130.00. The Tenant paid \$1,100.00 for July 2019 rent.

The tenancy for unit #6 started April 1, 2016 with rent of \$900.00 payable on the first day of each month. The Landlord increased the rent to \$975.00 effective March 1, 2018. The Tenant does not dispute this increase. On April 1, 2019 The Landlord served the Tenant with a notice of rental increase to \$1,050.00 effective July 1, 2019 without setting the increase out on an approved RTB form. The Tenant is disputing the rental increase to \$1,050.00.

Analysis

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order. Given the agreement of the Parties in relation to unit #1, I find that the Parties have agreed to settle the dispute with the Tenant paying monthly rent of \$1,000.00 effective July 1, 2019. To give effect to this agreement I order that the monthly rent for unit #1 is \$1,000.00 effective July 1, 2019 and continuing until increased in accordance with the Act. As the Tenant's application has had merit I find

that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable.

Section 42(3) of the Act provides that a notice of a rent increase must be in the approved form. Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount

- (a)calculated in accordance with the regulations,
- (b)ordered by the director on an application under subsection (3), or
- (c)agreed to by the tenant in writing.

The allowable rent increase for 2019 is 2.5%.

Given the evidence of the Tenant in unit #5 that the rental increase to \$1,100.00 is not disputed I find that the Tenant's monthly rent as of March 1, 2018 is \$1,100.00. Given the allowable rent increase of 2.5% I find that the Landlord could only increase the monthly rent for 2019 by \$27.50. Given the undisputed evidence that this rental amount was increased for 2019 without being on an approved RTB forms and with a rental increase amounts of \$50.00 and \$30.00, I find that the increases were greater than allowed under the Act and was not done in accordance with the Act. I therefore cancel both increases. I order that the monthly rent for unit #5 is \$1,100.00 effective March 1, 2018 and continuing until increased in accordance with the Act. As the Tenant paid \$1,100.00 for July 1, 2019 I find that there has been no overpayment of rent to be returned. As the Tenant's application had merit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct **\$100.00** from future rent payable.

Given the evidence of the Tenant in unit #6 that the rental increase to \$975.00 is not disputed I find that the Tenant's monthly rent as of March 1, 2018 is \$975.00. Given the allowable rent increase of 2.5% I find that the Landlord could only increase the monthly rent for 2019 to \$24.38. Given the undisputed evidence that on April 1, 2019 the Landlord served the Tenant in unit #6 with a rental increase not on an approved RTB

form and with a rental increase amount of \$75.00, I find that the increase was not done in accordance with the Act and I cancel that increase. I therefore order that the monthly rent for unit #6 is \$975.00 effective March 1, 2018 and continuing until increased in accordance with the Act. As the Tenant paid \$1,000.00 for July 1, 2019 rent I find that the Tenant is entitled to recovery of the rental overpayment of **\$25.00**. As the Tenant's application had merit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of \$125.00. The Tenant may deduct **\$125.00** from future rent payable.

Conclusion

The monthly rent for unit #1 is \$1,000.00 effective July 1, 2019. The monthly rent for unit #5 is \$1,100.00 effective March 1, 2018. The monthly rent for unit #6 is \$975.00 effective March 1, 2018.

The Tenant in unit #1 may deduct \$100.00 from future rent payable. The Tenant in unit #5 may deduct \$100.00 from future rent payable. The Tenant in unit #6 may deduct \$125.00 from future rent payable

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 15, 2019

Residential Tenancy Branch