



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC DRI OLC FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Issues

Is the tenant entitled to compensation for loss?

Is the proposed rent increase legal?

Should the landlord be ordered to comply with the *Act*?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began approximately 19 years ago. The current monthly rent is \$715.00 per month.

The tenant is claiming \$26,470.00 for illegal rent increases imposed by the landlord since the beginning of the tenancy. The tenant claims the landlord never utilized the approved form for rent increases and they were above the allowable amounts.

The landlord submits that for the years 2000 to 2008 the rent was at the original amount of \$450.00 per month. Although not in the approved form or amount, the rent was increased by written notice from \$450.00 to \$500.00 per month effective June 1, 2008. The rent was not increased again until August 2012 at which time it was increased to \$600.00 per month. The next increase was not implemented until January 2017 at which time the rent increased to \$700.00 per month. In January 2019 the rent was increase to \$715.00 per month and the tenant has paid this amount since.

The landlord argues that they have always had a positive relationship with the tenant and the tenant has never disputed a rent increase in the past. The landlord also argues that the tenant has failed to mitigate losses by not disputing any previous increases. The landlord submits the tenant waited more than 10 years after the first increase to file a dispute and continued to pay the rent each month without any complaint or disagreement. The landlord submits that the tenant did disagree with a proposed rent increase in mid-2019 and as a result the rent increase never materialized. The landlord argues that the tenant could and should have done the same for previous increases if she did not agree to them.

The landlord also submits that if the landlord did increase the rent for each year of the tenancy in accordance with the Act, the rent would be greater than the current amount paid by the tenant.

Analysis

Pursuant to section 42 of the Act, a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Under this section, a landlord must give a tenant Notice of a Rent Increase at least 3 months before the effective date of the increase and the Notice must be in the approved form.

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulation, ordered by the Director or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

It was not disputed that rather than imposing yearly rent increases in accordance with the maximum yearly amount permitted under the Act, the landlord increased the rent in small lump sum amounts after multiple years. There was not any evidence of the tenant disagreeing or raising concerns with any of the previous rent increases. I find the tenant's lack of voicing any concern or disagreement but rather continual payment of the imposed rent increases over the years to constitute implied consent with the increases. Further, I find the tenant failed to take reasonable steps to mitigate any potential losses as a result of the landlord's non-compliance with the Act. It would have been more reasonable for the tenant to voice her concerns to the landlord or file such an application soon after an illegal rent increase was imposed by the landlord rather than waiting more than 10 years to do so.

The tenant's application for monetary compensation is dismissed without leave to reapply.

The tenant did not submit any evidence in regard to a current disputed rent increase. As per the landlord's submission, a rent increase was proposed but abandoned as the tenant did not agree to it. This part of the tenant's application is also dismissed.

The landlord is ordered to comply with sections 42 and 43 of the Act with respect to any future rent increases imposed on the tenant. As the last rent increase was effective January 1, 2019, the next rent increase imposed by the landlord cannot be effective prior to January 1, 2020 after the landlord provides written notice of at least 3 months in the approved form.

As the tenant was for the most part not successful in this application, the tenant is not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: December 23, 2019

Residential Tenancy Branch