



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;

JC appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in December of 2018, and ended on May 31, 2020. Monthly rent was set at \$2,000.00, payable on the first of the month. It was undisputed by both parties that the landlord issued the tenants a Notice of Rent Increase in December of 2019, effective April 1, 2020, increasing the rent to \$2,052.00 per month.

The tenants paid the rent increase for the months of April and May 2020 before moving out at the end of May 2020. The tenants are applying for a refund of the \$104.00 additional rent paid as the Ministerial Order dated March 30, 2020 states that any rent increases, even if issued before the date of the Order, will not take effect during the period this Order is in effect.

The landlord is disputing the tenants' application as the Ministerial Order states that if a rent increase is collected that does not comply with the Order, the tenants may deduct from their future rent the additional rent paid. The landlord feels that as the tenancy ended on May 31, 2020, the tenants are not entitled to reimbursement of the rent increase paid.

Analysis

The tenants made an application requesting reimbursement of a rent increase paid in contravention of the Ministerial Order dated March 30, 2020.

As such, I find the text message sent to the tenant notifying her that her rent was increased from \$617.00 to \$625.00 is not compliant with Section 42. On this basis, I find that the tenant is entitled to compensation in the amount of \$72.00 (\$8.00 @ 9 months = \$72.00) for the imposed rent increase for September 2016 through to May 2017.

The Ministerial Order dated March 30, 2020 states the following about rent increases:

Rent increases – Residential Tenancy Act

6 (1) *Subject to subsection (2), if a landlord*

(a) gave a notice of rent increase under the Residential Tenancy Act before the date of this order and the effective date of the rent increase is after the date of this order, or
(b) gives a notice of rent increase under the Residential Tenancy Act during the period this order is in effect. The rent increase does not take effect during the period this order is in effect despite the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement.

(2) Subsection (1) of this section does not apply to a rent increase that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) of the Residential Tenancy Act.

(3) If a landlord collects a rent increase that does not comply with this section, the tenant may deduct the increase from rent or otherwise recover the increase.

I find that the Ministerial Order dated March 30, 2020 applies to the rent increase paid by the tenants. I find that even though the Notice of Rent Increase was issued in December 2019, the effective date was for April 1, 2020, which falls within the period that the Order was in effect. I find that the tenants paid an additional \$104.00 during the tenancy that does not comply with the Order. Although the landlord is correct that the tenants normally would have the ability to deduct the rent increase from their future rent, the Ministerial Order also allows the tenants the option to “otherwise recover the rent increase”. As this tenancy had ended the tenants were unable to deduct the \$104.00 from their future rent. As I find that the \$104.00 was collected in contravention of the Ministerial Order dated March 30, 2020, I allow the tenants’ application to recover the money owed to them.

Conclusion

I issue a monetary order in the tenants’ favour in the amount of \$104.00 against the landlord.

The tenants are provided with a monetary order 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: November 4, 2020

Residential Tenancy Branch