Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- To dispute a rent increase that is above the amount allowed by law.

The hearing was convened by telephone conference call and was attended by the Tenant L.S., two occupants of the rental unit M.P. and D.S, the Landlord D.G. and the Landlord's spouse B.G., who is also a co-owner of the rental unit. All testimony provided was affirmed. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and Notice of Hearing, as required, and raised no concerns with regards to service or timelines. Both parties also acknowledged receipt of each other's documentary evidence in accordance with the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). As a result, the hearing proceeded as scheduled and the documentary evidence before me from both parties was accepted for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Preliminary Matters #1

The Landlord indicated that their surname was not correctly recorded on the Application and provided me with their correct surname. The Application was amended to reflect the correct spelling of the Landlord's surname.

Preliminary Matter #2

Although two applicants D.S. and M.P. were listed as tenants in the Application, during the hearing the parties agreed that they were occupants of the rental unit rather than tenants, as they were not listed in the original tenancy agreement as tenants and the tenancy agreement had never been amended to include them.

As a result, I amended the Application to remove them as tenants. The hearing therefore proceeded between only the Tenant L.S. and the Landlord D.G.

Preliminary Matter #3

At the hearing the Tenant sought to increase the amount of their monetary claim to include additional months of unlawful rent increases paid since the Application was filed. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find that it was reasonable for the Landlord to anticipate that the Tenant would also be seeking recovery of any unlawful rent increase rent paid after the date the Application was filed, and I therefore amend the Tenant's Application to include recovery of any rent overpaid due to an unlawful rent increase up to an including the date of the hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Did the Landlord increase rent above the allowable amount without authority to do so under the Act?

Background and Evidence

The parties were in agreement that the tenancy began approximately 18 years ago between the Tenant (L.S.), the Tenant's ex-spouse, and the Landlord. Although the parties agreed that a written tenancy agreement had originally been entered into, neither party had retained a copy and the parties acknowledged that the tenancy had continued based on verbal agreements between the Tenant and the Landlord.

Although the parties agreed that rent was due on the first day of the month and that a security deposit had been paid, neither party could agree on what the initial rent amount was or what amount of a security deposit had been paid. The Tenant stated that rent was initially set at $700.00 per month and that a $350.00 security deposit had been paid. The Landlord stated that rent was actually $900.00 and that a $450.00 security deposit had been paid. Neither party submitted documentary evidence in support of their testimony.

In any event, the parties were in agreement that rent was increased several times between the start of the tenancy and January of 2018, when rent became $1,030.00. The parties agreed that rent was always increased by mutual agreement either verbally, or by text message, and neither party took issue with the amount of rent due as of January 1, 2018, or the rent increases that lead up to this amount.

The parties were in agreement that rent was increased to $1,060.00 effective January 1, 2019, and that the Tenant paid this rent; however, they disagreed about whether this was a permitted rent increase in accordance with the Act. The Tenant stated that it was not a lawful rent increase as it was agreed to verbally, no proper Notice of Rent Increase was issued by the Landlord in the approved form or with the proper notice, and it was greater than the 2.5% increase allowable. Although the Landlord agreed that no Notice of Rent Increase form was used, as rent increases had always been agreed to by the parties verbally and by text message, and that the amount was greater than the 2.5% allowable increase, they argued that it was none the less valid as the Tenant had agreed to it and had paid it of their own free will. They also argued that the text message and the written cheques should constitute written agreement in accordance with the Act.

The parties agreed that rent was increased again in July of 2019 by $340.00, bringing the total amount of rent due per month up to $1,400.00. There was agreement during the hearing that the Tenant paid this amount in rent, however, the parties disagreed about why the Tenant agreed to this rent increase and whether this rent increase was

permitted under the Act. The Tenant stated again that that it was not a lawful rent increase as it was agreed to verbally, no proper Notice of Rent Increase was issued by the Landlord in the approved form or with the proper notice, that rent was increased much earlier than allowable based on the previous rent increase on January 1, 2019, and that it was significantly greater than the 2.5% allowable increase. Further to this, the Tenant stated that they felt compelled to agree to this rent increase as the Landlord had advised them that if they did not, they would evict them by way of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of the Rental Unit (a Four Month Notice) and they had nowhere else to go.

The Landlord acknowledged that rent was increased as set out above but argued that there was no ill intent on their part. The Landlord stated that although they had wanted to renovate the rental unit for a number of years, as the rental unit was being rented well below market value and was in need of repair and refurbishment, they had agreed to continue the tenancy as they had a good long-term relationship with the Tenant and the Tenant had agreed to several rent increases that made it financially tenable to continue the tenancy. The Landlord and their spouse stated that in July 2019, it became necessary for them to either increase the rent, renovate the rental unit so that increased rent could be obtained, or sell the property. The Landlord stated that they approached the Tenant and advised them of the situation and offered them the option to be served with a Four Month Notice or agree to the $340.00 rent increase. The Landlord stated that the Tenant agreed to the rent increase of their own free will and the tenancy therefore continued at $1,400.00 per month. Again, the Landlord argued that it was a valid rent increase as the Tenant had agreed to it and had paid it of their own free will. They also argued that the text message and the written cheques should constitute written agreement in accordance with the Act.

The Parties agreed that a Four Month Notice was subsequently served on the Tenant by the Landlord and that the tenancy will be ending on March 1, 2021 as a result. The Tenant stated that the Four Month Notice was served after they refused another $250.00 rent increase proposed by the Landlord in October of 2020. The Landlord and their spouse disagreed, stating that for financial reasons it had become untenable for them to continue the tenancy as-is and they had chosen to renovate and repair the rental unit to bring it up to a place of decoration and repair that would allow them to obtain market rent, rather than sell the property.

The Tenant argued that the Four Month Notice had been issued in bad faith as all of the renovations and repairs listed were cosmetic in nature. However, they agreed that they did not dispute the Four Month Notice and would be moving out on March 1, 2021, in

accordance with it. The Landlord and their spouse disagreed that the Four Month Notice was issued in bad faith or that they had acted improperly, stating that although they had wanted to renovate the rental unit for several years, they had continued the tenancy as a show of good faith towards the Tenant, despite the fact that it was rented to them at a rental rate significantly below market value. The Landlord and their spouse stated that as they had a good relationship with the Tenant and the Tenant had agreed to rent increases which made it financially tenable for them to continue the tenancy, they had done so, until it became necessary for them financially to either sell the property or renovate and repair it, at which point the Four Month Notice was served.

As a result of the above, the Tenant sought recovery of $7,210.00 at the hearing which they believe was collected by the Landlord by way of unlawful rent increases between January 1, 2019 and January 1, 2021; $30.00 per month between January 1, 2019 – June 30, 2019, and $370.00 per month ($340.00 plus the previous $30.00) between July 1, 2019 – January 31, 2021. The Landlord denied that the Tenant is entitled to any such compensation, stating that they tenant agreed to the rent increases and that in any event, the Tenant had failed to mitigate their loss because they did not act diligently in either ascertaining their rights or seeking to dispute the rent increases. The Tenant disagreed that they had failed to mitigate their loss, stating that although they had not initially understood the requirements with regards to rent increases, they had filed their Application as soon as they became aware of their rights and had not sought compensation for rent increases prior to January 1, 2019.

The parties agreed that no rent has or will be paid for February 2021, as the Tenant has exercised their right to withhold that rent in accordance with section 51(1.1) of the Act.

Both parties submitted documentary evidence for my consideration at the hearing as follows. The Tenant submitted registered mail receipts and tracking numbers, three audio recordings of conversations with the Landlord, copies of cheques, a Monetary Order Worksheet, a copy of the Four Month Notice, and a Digital Evidence Details form. The Landlord submitted a two page written statement, copies of text messages between themselves and the Tenant on March 22, 2019, and several pages from a community legal assistance society regarding verbal tenancy agreements.

Analysis

Part 3 of the Act, which includes sections 40-43, sets out the requirements for rent increases under the Act. Section 41 states that a landlord must not increase rent except

in accordance with this Part. Section 42 of the Act states that 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.

It also states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase, that the notice of a rent increase must be in the approved form and that if a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Further to this, section 43(1) of the Act states a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or as agreed to by the tenant in writing.

Policy Guideline #37, section D states that although a tenant may agree to a rent increase that is greater than the maximum allowable amount, that agreement must be in writing and must clearly set out the agreed upon rent increase (for example, the percentage increase and the amount in dollars) and contain the tenant’s signed agreement to that increase. It also states that the landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases, meaning that the Landlord was still required to give the Tenant a Notice of Rent Increase on the approved form, not less than three months before the start date of the rent increase, and not sooner than 12 months after the date of the last rent increase, even if the amount of the rent increase agreed upon was greater than allowable under the Act.

Based on the above and the documentary evidence and affirmed testimony before me from the parties for consideration, I find that neither the rent increase on January 1, 2019, or the rent increase on July 1, 2019, were done in accordance with the Act and Policy Guideline #37, as there is no written agreement for either rent increase, both of which are in excess of the allowable amount, setting out the amount agreed to and the Tenant’s signature. Further to this, the parties acknowledged that no notices of rent increase were ever issued to the Tenant on the approved form and the rent increase on July 1, 2019 was less than 12 months after the previous rent increase on January 1, 2019. As a result, I find that the Landlord breached sections 41 – 43 of the Act and Policy Guideline #37 when they increased the rent on these two occasions.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. As stated above, I have found that the Landlord failed to comply with the requirements of the Act and Policy Guideline #37 with regards to rent increases. I am also satisfied that the Tenant suffered a significant financial loss as a result, as the parties were in agreement that the Tenant paid both of the rent increase up to an including January 2021.

However, section 7 of the Act also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Although the Tenant argued that they mitigated their loss by exercising their right to dispute the rent increases as soon as they became aware of their rights, I disagree. The parties were in agreement at the hearing that rent had been routinely increased verbally throughout the 18 year tenancy without service of a Notice of Rent Increase in compliance with the Act. Further to this, the Tenant acknowledged that they knew at least the last increase in July of 2019 was well in excess of the allowable rent increase amount and was significantly earlier than allowable based on the date of their last rent increase. Despite this, the Tenant still agreed to the rent increase and paid it for 18 months before filing their Application seeking to dispute it and the previous rent increase on January 1, 2019.

As a result of the above, I find that the Tenant failed to mitigate their loss by first failing to act diligently over the vast majority of their 18 year tenancy in ascertaining their rights in relation to rent increases under the Act and then by agreeing to a rent increase in July of 2019 which they knew at the time was significantly greater than the allowable rent increase amount and significantly earlier than allowable based on the date of their last increase, only taking action to dispute this last increase, and the one prior, when the Landlord served or advised them that they were planning to serve a Four Month Notice approximately 18 months later.

Based on the above, I find that both parties were in breach of the Act in relation to the rent increases, the Landlord for not complying with the Act and the Policy Guidelines, and the Tenant for not mitigating their loss. As a result, I find that both parties bear some culpability for the fact that rent was not increased in accordance with the Act and that both parties shall bear some loss in relation to it. I have therefore only considered compensation in relation to the last rent increase of $340.00, and only as far back as 12 months prior to the month in which the Application was filed.

I have therefore awarded the Tenant only $5,100.00 in compensation calculated as follows: $340.00 per month for the 15 month period between November 1, 2019, and January 31, 2021.

Pursuant to section 67 of the Act, the Tenant is therefore entitled to a Monetary Order in the amount of $5,100.00.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$5,100.00**. The Tenant is provided with this Order 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. The Landlord is cautioned that costs of such enforcement may be recoverable from them by the Tenant.

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: February 5, 2021

Residential Tenancy Branch