



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 06, 2020 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant appeared at the hearing late. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed receipt of the hearing package and Tenant’s evidence. The Tenant confirmed receipt of the Landlords’ evidence other than the tenancy agreements. I have considered the tenancy agreements given the nature of these documents and given I reviewed these with the parties during the hearing and the parties agreed they are accurate. Further, the Tenant also submitted the tenancy agreements.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$8,850.00 in compensation on the basis that the Landlords increased the rent contrary to the *Residential Tenancy Act* (the “Act”) between fixed term tenancy agreements.

Four written tenancy agreements were submitted as evidence and the parties agreed they are accurate.

The terms and rent amounts for the tenancy agreements are as follows:

1. January 05, 2017 for a fixed term of one year ending January 05, 2018. Rent was \$3,300.00 per month due on the 5th day of each month.
2. January 05, 2018 for a fixed term of one year ending January 05, 2019. Rent was \$3,500.00 per month due on the 5th day of each month.
3. January 05, 2019 for a fixed term of one year ending January 05, 2020. Rent was \$3,650.00 per month due on the 5th day of each month.
4. January 01, 2020 for a fixed term of one year ending January 01, 2021. Rent was \$3,750.00 per month due on the 1st day of each month.

The parties agreed the tenancy ended August 01, 2020.

The Tenant testified as follows. The original tenancy agreement said that the Landlords could not increase rent without three months written notice. The Landlords came to him in December of the first year of the tenancy and told him they would increase the rent and he could either comply or move out. The rental unit was his primary residence and so he had no choice but to sign the second tenancy agreement. He brought up the requirements around rent increases, but the Landlords told him the rent amount was their term and that he could move out if he did not like it. Nothing changed between the tenancy agreements, other than the period the tenancy agreement covered and the rent amounts.

The Tenant sought a finding that rent should have remained at \$3,300.00 for the entire tenancy and sought compensation for all amounts paid over and above this.

Landlord P.K. testified as follows. The Landlords found out the Tenant was using the rental unit for short-term vacation rentals. The Tenant wanted to continue to use the rental unit for short-term vacation rentals and he suggested the rent increases to allow for this. Allowing the Tenant to use the rental unit for short-term vacation rentals

required extra insurance. The Landlords considered that the Tenant was using the rental unit for short-term vacation rentals when the rent was increased between the first and second tenancy agreements.

Landlord P.K. further testified as follows. The Landlords did not know the process to increase the rent. The Landlords gave the Tenant a discount on rent during the pandemic. Nothing changed between the tenancy agreements, other than the period the tenancy agreement covered and the rent amounts. It was the Tenant who suggested the rent increases each year.

In reply, the Tenant denied Landlord P.K.'s testimony and said that it was agreed from the start that the Tenant could rent out other rooms in the rental unit.

The Landlords took issue with the Tenant waiting until the tenancy was over to raise this issue in relation to the rent increases.

The Tenant provided an excel spreadsheet with a breakdown of overpayments due to the rent increases.

The Landlords provided written submissions which state in part the following. The parties agreed to increase the rent because the Tenant was using the rental unit for short-term vacation rentals which resulted in increased insurance costs. Rent was increased each year with written and verbal notice to the Tenant and co-tenant "well before the date required by the RTB". Rent was discounted \$1,000.00 per month from June to November of 2020. The Landlords realized they made a mistake in relation to the percentage of the rent increases in 2018 and 2019, although the Tenant agreed to these increases.

Analysis

Policy Guideline 30 states at page four:

H. RENT INCREASES AND FIXED TERM TENANCIES

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the

landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

Rent increases are governed by Part 3 of the *Act* which states in part:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) 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.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) 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.

Amount of rent increase

43 (1) 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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part...

(5) 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* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I am satisfied based on the written tenancy agreements in evidence and the testimony of the parties that the parties entered into four separate fixed term tenancy agreements for the same rental unit from 2017 to 2020.

I am not satisfied based on the evidence provided that anything changed between the four fixed term tenancy agreements, other than the period covered by the tenancy agreement and the rent amount. The parties disagreed about whether anything changed. The Landlords testified that there was a change in relation to the Tenant being permitted to use the rental unit for short-term vacation rentals. The Tenant denied this was a change. The alleged change is not reflected in the written tenancy agreements or any written communications between the parties that are before me. I would expect a change to the terms of a written tenancy agreement to be noted in writing. I accept the Tenant's position that there was no change between the tenancy agreements.

Pursuant to Policy Guideline 30, the Landlords were required to comply with Part 3 of the *Act* in relation to rent increases. Pursuant to section 42(2) of the *Act*, the Landlords were required to give a Notice of Rent Increase in the approved form and were required to comply with the remaining sections of Part 3 of the *Act*. I am not satisfied the Landlords did provide a Notice of Rent Increase in the approved form as there are no such notices before me. I am satisfied the Landlords failed to comply with Part 3 of the *Act*.

The Landlords are not relieved of their obligations under the *Act* because they did not know or understand their obligations. Both landlords and tenants are expected to know and understand their rights and obligations under the *Act*.

Given the rent was not increased in accordance with Part 3 of the *Act*, the rent increases were contrary to the *Act* and the Landlords failed to comply with the *Act*.

I am not satisfied the Tenant is entitled to compensation in the amount of \$8,850.00 for rent paid over and above \$3,300.00 for three years because I find the Tenant failed to mitigate his loss by allowing the rent increases to occur without raising this as an issue for three years and by allowing the overpayments to accumulate to \$8,850.00, which is a substantial amount.

The Tenant submitted that he had no choice but to agree to the rent increases. I do not accept this. The earlier tenancy agreements specifically state, “at the end of this fixed length of time...the landlord and tenant **may** agree to enter into a new tenancy agreement **if** the landlord and tenant **do not** enter into a new tenancy agreement, **the tenancy continues on a month-to-month basis** on the same terms unless the tenant gives legal written notice to end the tenancy” (emphasis added). The later tenancy agreements state, “At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term”.

There was no obligation for the Tenant to sign new tenancy agreements. If the Tenant had chosen not to sign new tenancy agreements, the tenancy would have continued on a month-to-month basis. The Landlords would not have been able to simply end the tenancy if the Tenant did not sign new tenancy agreements. The Landlords could only have ended the tenancy in accordance with section 44 of the *Act*. The Tenant was expected to know and understand his rights in this regard, just as the Landlords were expected to know and understand their rights and obligations in relation to rent increases.

The Tenant should not have waited three years, until the tenancy ended, to raise an issue in relation to the rent increases, particularly given the Tenant chose to sign new tenancy agreements and in effect agreed to the increased rent amounts. Had the Tenant raised this issue in the second year of the tenancy, the overpayments would not have accumulated to \$8,850.00, which again is a substantial amount.

Given the Tenant failed to mitigate his loss, I limit the compensation awarded to the Tenant for this issue to one year of overpayments. I limit the compensation to the amount paid over and above \$3,300.00 from January 05, 2018 to January 05, 2019 as I find the Tenant should have raised this issue in the second year of the tenancy, when the rent was increased for the first time. Therefore, I award the Tenant \$2,400.00 pursuant to section 67 of the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Tenant is issued a Monetary Order for \$2,500.00.

Conclusion

I award the Tenant \$2,500.00. The Tenant is issued a Monetary Order in this amount. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: February 17, 2021

Residential Tenancy Branch