



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, MNDCT**

Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement; and, compensation for overpaid rent.

The tenant and an agent for the property management company appeared at the commencement of the hearing.

The agent stated the parties had resolved the dispute pursuant to a written agreement and the hearing was to be cancelled. The tenant indicated that they had reached an agreement with respect to the amount of monthly rent payable; however, the owner of the property had not "followed through". The owner was named on the Application for Dispute Resolution but was not in attendance. The landlord's agent called the owner and requested his attendance. The owner (referred to by initials DS) appeared shortly thereafter and the hearing got underway.

The landlord's agent and the owner indicated they could proceed to resolve this matter even though they thought it had been.

I explored service of hearing materials upon each other.

The tenant testified that she sent her proceeding package and evidence, namely two Notices of Rent Increase, to the landlord's agent via registered mail. The landlord's agent confirmed receipt of the proceeding package but stated there was no evidence with the package.

The tenant testified that she served the proceeding package and evidence, to the owner DS in person. DS confirmed he receipt the proceeding package and he had two Notices of Rent Increase before him.

As for the landlord's evidence, including a signed mutual agreement, the landlord's agent stated the documents were emailed to the tenant on April 27, 2021. The tenant stated she received documents from the landlord in the mail, including the mutual agreement.

Since both parties pointed to a mutual agreement, I read it aloud and asked the tenant to clarify what she meant by the owner DS had not followed through. The tenant stated that she expected a refund of the rent paid in excess of \$1023.00 and it had yet to be received.

The Mutual Agreement is dated April 15, 2021 reflects the following terms:

1. The parties both acknowledge that the current rent is \$1,023.00 per month.
2. The last rent increase that was sent was revoked due to government ban on rent increases; therefore, there was no rent increase.
3. As soon as the government lifts the rent freeze, there will be a rent increase according to the government allowable percentage.

I noted the Mutual Agreement reflected an agreement as to how much the monthly rent is but that it was silent with respect to how much rent the landlord had actually received and if there was an overpayment how the overpayment would be dealt with. Accordingly, I proceeded to explore where there is a refund owing to the tenant, as she claims.

On another procedural note, the owner's name was spelled incorrectly by the tenant in filing the Application for Dispute Resolution. The owner's name was amended to reflect the correct spelling.

Issue(s) to be Decided

Has the tenant overpaid rent and if so, how is the overpayment to be resolved?
Is it necessary and appropriate to issue orders to either party?

Background and Evidence

The tenant submitted she received a Notice of Rent Increase “stamped” with the date October 20, 2020 to increase her rent from \$1023.00 to \$1037.00 effective November 1, 2020 and that the Ministry has been paying the landlord \$1037.00 since November 1, 2020. The tenant submitted the rent should not have been increased and she is entitled to recover the overpayment of \$14.00 for each month the landlord collected \$1037.00 and the landlord has yet to issue a refund.

The landlords acknowledged a Notice of Rent Increase had been issued to increase the rent from \$1023.00 to \$1037.00 but that the government subsequently banned rent increases and rent remains at \$1023.00. The landlord’s agent acknowledged that \$1037.00 was received from the Ministry on behalf of the tenant for the months of February 1, 2021 onwards and there is a credit on the tenant’s account of \$42.00. The landlord’s agent attributes the overpayment to the tenant’s failure to notify the Ministry to only send the landlord \$1023.00. As for the \$42.00 credit, the landlord’s agent stated the landlord intends to refund it to the Ministry since the Ministry pays the rent.

The tenant disputed that the increased rent payments started February 1, 2021 and insisted the Ministry started paying the increase on November 1, 2020. The tenant conceded that she did not have the Notice of Rent Increase in front of her.

The owner DS stated that the Notice of Rent Increase is “stamped” October 20, 2020 and this is the date it was signed by the landlord but that the effective date reads February 1, 2021 which is consistent with the landlord’s ledger that shows the increased rent payments were received starting February 1, 2021.

The tenant conceded that she did not have documents from the Ministry before her that show the increased rent payment started November 1, 2020.

The tenant was of the position that any overpaid rent should be refunded to her since she is given a shelter allowance by the Ministry and the rent payment that exceeds her shelter allowance comes out of the rest of her disability cheque.

The landlord’s agent stated the landlord does not want to continue to receive \$1037.00 from the Ministry as this creates more work for their bookkeeper and creates a potential for fraud.

The tenant acknowledged it is her responsibility to notify the Ministry of her rent obligation but that the Ministry did not want to send the landlord less than \$1037.00 without something in writing first.

Analysis

Under section 26 of the Act, a tenant is required to pay rent that is due to the landlord. The rent is set out by a tenancy agreement and is subject to rent increases that comply with the Act.

In 2020 the government prohibited rent increases from taking effect due to the Covid-19 pandemic. There are instances where Notices of Rent Increase were served upon tenants but the rent increases are of no effect.

In this case, a Notice of Rent Increase was issued by the landlord on October 20, 2020 and the parties are in agreement that it is of no effect. Based on the Mutual Agreement signed by the parties, I accept that the monthly rent is \$1023.00.

During the hearing, the parties were in agreement that the landlord had received payments of \$1037.00 from the Ministry but the parties were in dispute as to when the increased payments started and how the overpayment is to be refunded.

Neither the tenant, nor the landlord's agent had the subject Notice of Rent Increase before them during the hearing; however, the tenant had submitted it to the Residential Tenancy Branch and the owner DS had a copy of it. The Notice of Rent Increase described by DS during the hearing contains the same information as the Notice of Rent Increase the tenant had submitted to the Residential Tenancy Branch. The Notice of Rent Increase submitted to the Residential Tenancy Branch by the tenant has a stated effective date of February 1, 2021 which is consistent with DS's testimony. Therefore, I find the Notice of Rent Increase dated October 20, 2020 was to take effect starting February 1, 2021 had rent increases not been prohibited.

The landlord submitted that the landlord started receiving \$1037.00 from the Ministry starting February 1, 2021 which is consistent with the Notice of Rent Increase. As such, I find the landlord's evidence that it has received an overpayment of \$14.00 for the months of February 2021, March 2021, April 2021, and May 2021 to be likely and the tenant is entitled to recover the overpayments from the landlord in the amount of \$56.00 (\$14.00 x 4 months).

As for the landlord's position the overpayment should be refunded to the Ministry, I find that position to be inaccurate. It is the landlord and the tenant that have a contract with each other concerning this tenancy. Accordingly, the obligation to pay rent rests with the tenant and it is the tenant who receives the benefit of paying rent and the consequences of failing to pay rent. Other than a government run facility where the government provides the housing and pays the rent; the tenant's source of income is no consequence to the landlord. Accordingly, it is upon the tenant to inform the Ministry how much rent to send to the landlord, if the tenant so chooses to have direct payment, and any shortfall or overpayment is to be dealt with between the landlord and the tenant. The tenant may then deal with the Ministry concerning payments made on her behalf.

To resolve this dispute and avoid future disputes, by way of this decision, I issue the following orders to the parties pursuant to the authority afforded me under section 62 of the Act:

I order:

- 1. The landlord to issue a refund cheque to the tenant for overpaid rent and I provide the tenant with a Monetary Order in the amount of \$56.00.**
- 2. Effective immediately, the tenant is to instruct the Ministry that her monthly rent obligation is currently \$1023.00 per month, until such time the rent is legally changed. The tenant may provide the Ministry a copy of this decision if the Ministry seeks written documentation.**

Conclusion

The parties reached a mutual agreement that the monthly rent is \$1023.00 currently and the Notice of Rent Increase issued on October 20, 2020 is of no effect.

The landlord is ordered to refund the rental overpayments to the tenant in the sum of \$56.00.

Effective immediately, the tenant is to instruct the Ministry that her monthly rent is \$1023.00.

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: May 04, 2021

Residential Tenancy Branch