



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on May 20, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's documentary evidence. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding. No service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The parties both agreed that the tenancy started on or around May 1, 2018. Monthly rent at that time was set at \$3,900.00 and was due on the first of the month. That tenancy agreement was for a 1 year fixed term, ending April 30, 2019. The parties signed a subsequent tenancy agreement, starting May 1, 2019. This second tenancy agreement was for a month-to-month tenancy, with monthly rent in the amount of \$4,250.00. Copies of both tenancy agreements were provided into evidence.

The Landlord stated that they sold the house at the end of October 2020. The Landlord further explained that during the COVID emergency period from March through August 2020, the Tenants fell behind on rent, and also they also failed to pay September 2020 rent. The Landlords stated that the Tenants fell behind by \$19,250.00, and a repayment plan was agreed to by the parties. Subsequently, the Tenants repaid all but \$4,500.00 of this amount. The Landlord and the Tenants both agree that the Tenants still had \$4,500.00 in unpaid rent from the COVID period (and as per the repayment plan).

However, the Tenants stated that they recently became aware that they had overpaid rent for 18 months, which means they should not have to pay the Landlord the remaining \$4,500.00. More specifically, the Tenants stated that the Landlord insisted that they sign a new tenancy agreement in the spring of 2019. Rent was increased from \$3,900.00 to \$4,250.00 which was an increase of \$350.00 per month. The Tenants stated that the maximum amount of rent increase, that was allowable under the Act for 2019 was 2.5%, which means the Landlord could have only increased rent by \$97.50. The Tenants stated that this means they overpaid from by \$252.50 per month from May 2019, until October 2020, which amounts to a rent overpayment of \$4,545.00.

The Landlord stated that because the Tenants mutually agreed to a rent increase, it is legal.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

I note the following relevant portions of the Act and of Policy Guideline #37 – Rent Increases:

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.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(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.

Policy Guideline:

C. AGREED RENT INCREASE

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

I note the maximum allowable rent increase for 2019 was 2.5%, which was a maximum increase of \$97.50, as of May 1, 2019, not the \$350.00 that was imposed by way of the new tenancy agreement. I find the Tenants agreed to the rent increase, by way of the new tenancy agreement. However, there is no evidence that the Landlord issued a Notice of Rent increase. In order to affect a rent increase above the allowable maximum of 2.5%, the Landlord required the Tenant's consent, in writing, which I find was done by way of the tenancy agreement. However, the Landlord would still have had to issue a formal Notice of Rent Increase. I find that by failing to do this, the Landlord has illegally

increased rent by an additional \$252.50 per month, for 18 months. I find this amounts to a rent overpayment of \$4,545.00.

I note the Landlord is seeking to recover the remaining \$4,500.00 in rent that he feels he was owed from missed rent payments. However, I dismiss this claim in full, as the Tenants had a legal basis to withhold this amount. Additionally, I find the Tenants are owed an additional \$45.00, as they have overpaid by this amount.

The Tenants are entitled to a monetary order for this amount.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$45.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: May 20, 2022

Residential Tenancy Branch