



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP 1ST WEST
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 1, 2022. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were present at the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package. No issues were raised with service of this package. The Landlord stated she sent her evidence package by registered mail on November 22, 2022, and proof of mailing was provided in the hearing. The Tenant stated she never received this package. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed served with this package 5 days after it was sent by mail, on November 27, 2022.

As per Rule of Procedure 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The Landlord's evidence was served late by several days, and the Landlord provided no compelling reasons as to why the documents were served so late. I find the Landlord's evidence was not served in accordance with the Rules, and without good reason, as such I find it is not admissible.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules

of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing and after discussing priorities with the applicant, I determined that the most pressing and related issues deal with compensation related to an unlawful rent increase. As a result, I exercised my discretion to dismiss all of the Tenant's application, with leave to reapply, with the exception of her claim for monetary compensation.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damage or loss under the Act in relation to an unlawful rent increase?

Background and Evidence

A copy of the Tenancy Agreement was provided into evidence, and it shows that the tenancy started on August 1, 2020, and that rent was set at \$3,300.00, due on the first of the month. The Tenant confirmed that she didn't receive any rent increase notices until the fall of 2021, when she was given one to increase her rent to \$3,349.00, effective January 1, 2022.

The Tenant stated that the Landlord agreed, due to some issues with the rental unit, to not proceeding with the January 1, 2022, rent increase. A copy of the text message was provided into evidence. The Tenant stated that in January 2022, the Landlord withdrew the increased amount from her bank account, which she raised as an issue with the Landlord because they had agreed to cancel that notice of rent increase. The Tenant stated that the Landlord agreed it was an error, and they refunded her the \$49.00 for January.

The Tenant stated that following this, there were no issues until the Landlord started withdrawing \$3,349.00 from her account starting May 1, 2022. The Tenant stated she has been paying this amount since that time, but asserts she was never given a proper Notice of Rent Increase for May 1, 2022. The Tenant is seeking her rent overpayments back.

The Landlord did not dispute that they agreed to set aside the first Notice of Rent Increase, which was set to start January 1, 2022. The Landlord did not refute that they refunded the Tenant \$49.00 in January 2022 due to this accounting error and overpayment. The Landlord stated they issued a new Notice of Rent Increase to the Tenant in January 2022 sometime, with an effective date of May 1, 2022, increasing rent from \$3,300.00 to \$3,349.00. The Landlord stated they sent this by email and by mail. However, the Landlord had no admissible documentary evidence showing this most recent rent increase Notice, nor did they have proof of service for this Notice.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

I turn to the Tenant's application to recover rent that was overpaid due to an unlawful rent increase.

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a landlord has to follow in order to affect a legal rent increase.

I note the following portions of the Act:

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.

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.

[...]

(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.

I note there was a rent increase given in the fall of 2021, which was set to be effective as of January 1, 2022. However, neither party disputed that this Notice was cancelled. I note the Landlord stated they re-issued the Notice of Rent Increase in January 2022, with an effective date of May 2022. However, the Landlord failed to provide any admissible copy of this Notice. The Tenant denies getting this second Notice. Given there is no copy provided, I am not satisfied the second Notice of Rent Increase, which was set to start of May 1, 2022, complies with form and content requirements set out in section 42(3) of the Act. As such, I am not satisfied there is sufficient evidence that the May rent increase was lawful. Rent will remain at \$3,300.00 until such time as it is lawfully increased.

I find the Tenant is entitled to recover the rent overpayments of \$49.00 per month for May 2022 – December 2022 (\$392.00).

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to \$492.00. The Tenant may deduct this from one future rent payment.

Conclusion

The Tenant may deduct \$492.00 from one future rent payment. Rent will remain at \$3,300.00 until it is lawfully increased in accordance with the Act.

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: December 2, 2022

Residential Tenancy Branch