

## **Decision**

### **Dispute Codes:**

MNDC, OLC, FF

### **Introduction**

This is the Tenant's application for a Monetary Order for compensation for damage or loss; for an Order that the Landlord comply with the Act; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The Tenant gave affirmed testimony and the Hearing proceeded on its merits.

### **Preliminary Matter**

This matter was scheduled to be heard by teleconference at 9:00 a.m. on April 23, 2010.

The Tenant testified that he mailed the Landlord the Notice of Hearing documents by registered mail on December 8, 2009. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant testified that he sent the Landlord copies of his evidence package, via signature mail, on April 13, 2009. The Tenant provided a copy of the receipt and tracking number in evidence.

I am satisfied that the Tenant served the Landlord with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed effected 5 days after mailing the documents. Therefore, I find that the Landlord was served with the Notice of Hearing documents on December 13, 2009. Despite being duly served, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

### **Issues to be Decided**

- Is the Tenant entitled to a Monetary Order for compensation for damage or loss, and if so, in what amount?
- Is the Tenant entitled to an Order that the Landlord comply with the Act?

### **Background and Evidence**

#### **The Tenant gave the following testimony:**

The Tenant entered into a verbal tenancy agreement with the Landlord and moved into the rental unit in February, 2007. The Landlord did not require a security deposit. Rent was \$500.00 a month, due on the first day of each month.

In December, 2008, the Landlord told the Tenant that his rent would be increasing to \$600.00 per month, effective February 1, 2009. The Tenant paid the increased rent until November, 2009, when he discovered that the Landlord had imposed a rent increase that was more than allowed under the Act, and that the Landlord was required to provide notice of a rent increase on an approved form and to give 3 months notice of the increase. The Tenant testified that he did not agree in writing that the rent could be increased to \$600.00 per month.

The Tenant wrote to the Landlord on November 30, 2009, advising that he would be deducting the difference (between what the Landlord was entitled to and what the Landlord had demanded ) from future rent. The Landlord responded by issuing a Notice to End Tenancy for Unpaid Rent on December 5, 2009.

The tenancy ended on December 14, 2009.

The Tenant is applying for a monetary award in the amount of \$815.00, calculated as follows:

- Base rent:  $\$500.00 \times 3.7\%$  (allowable rent increase) = \$18.50
- Overpayment of rent, per month ( $\$600 - \$518.50$ ) = \$81.50

- Overpayment of rent from February 1, 2009 to November, 2009 (10 months x \$81.50) = \$815.00

## **Analysis**

Section 1 of the *Residential Tenancy Act* (the “Act”) defines “tenancy agreement”, as follows:

**“tenancy agreement”** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the undisputed testimony and supporting documentary evidence of the Tenant, I find that the Landlord and the Tenant had a verbal tenancy agreement.

Sections 41, 42, and 43(1) of the Act, state:

### **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 established under the tenancy agreement;

(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.

(emphasis added)

The regulations provide for a maximum rent increase of 3.7% for the 2009 calendar year.

I find that the Landlord did not comply with Sections 42(2) and (3) of the Act. I find that the Landlord increased the Tenant's rent by 20%, contrary to Section 43 of the Act and the regulations. I find that the Tenant did not agree to the 20% rent increase in writing.

Despite the fact that the Landlord did not provide the Tenant with due Notice on the approved form pursuant to the provisions of Sections 42(2) and (3) of the Act, the Tenant (in his letter dated November 30, 2009), did agree in writing to pay the Landlord a rent increase in the amount of 3.7% from February 1, 2009.

Therefore, I allow the Tenant's claim in the amount of \$815.00 in compensation for the overpayment of rent as claimed.

The tenancy ended on December 14, 2009, and therefore I decline to order the Landlord to comply with the Act.

The Tenant has been successful in his claim and is entitled to recover the cost of the filing fee from the Landlord.

**Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of \$865.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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 Residential Tenancy Act.

Dated: May 6, 2010