



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARNABY MANOR
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant. The tenant was seeking a refund of \$380.00 for past payment of a rent increase that the tenant alleges was not properly implemented in accordance with the Act.

Issues to be Decided

Is the tenant entitled to a refund rent due to a noncompliant rent increase imposed by the landlord?

Background and Evidence

The parties testified that this tenancy began in April 2006 and a security deposit of \$400.00 was paid. The tenancy ended on April 30, 2013. \$280.00

The tenant testified that, during his tenancy, he received notices of rent increase and by the time he vacated, on April 30, 2013, his current rent was \$895.00 per month. The tenant testified that his landlord suddenly demanded that he pay an additional \$389.00 in rent, for unpaid arrears. This was allegedly based on the landlord's claim that a Notice of Rent Increase was purportedly served on the tenant in March 2012, increasing the rent from \$895.00 to \$933.00 effective July 1, 2012. According to the landlord, the tenant had not paid the \$38.00 increase in rent for 10 months.

The tenant testified that he never received any Notice of Rent Increase in March 2012 at all. The tenant testified that he did pay the \$380.00 demanded by the landlord, but this was only to ensure he was given a good reference for his subsequent rental application. However, the tenant disputes that the landlord was entitled to collect these funds as the Notice of Rent Increase was never received by the tenant and he was not advised that his payments of \$895.00 were deficient. The tenant's position is that, without serving a valid rent increase notification, the landlord is not entitled to these funds and must repay them to the tenant.

The landlord acknowledged that rent increase notices had been served periodically during this tenancy and that the tenant was properly served with a Notice of Rent Increase that was effective on July 1, 2012. The landlord acknowledged that he did not personally serve the documents, in March 2012, but their records indicated that the Notice was served, although the date and details were not available. The landlord submitted a copy of this Notice into evidence, along with the copies of previous Notices. The landlord's position is that the tenant is not entitled to a refund of \$380.00.

Analysis

Section 7 of the Act states that 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. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on each claimant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party.

Section 40 of the Act states that a landlord must not increase rent except in accordance with the Act. Section 42(1) states that 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; or (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Section 42(2) of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and 42(3) provides that a notice of a rent increase must be in the approved form.

The burden of proof is on the party serving the documents to show that the Notice of Rent increase was properly filled out and served on the other party in compliance with the Act. In regard to the validity of the Notice of Rent Increase form in evidence, I find that the document is compliant with the Act and Regulations.

I find that the landlord offered verbal testimony that the Notice of Increase was properly served back in March 2012, but this verbal testimony was challenged by the tenant.

Section 88 of the Act requires that all documents, other than those referred to in section 89 [*special rules for certain documents*], must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, the burden of proof is on the landlord to prove that the Notice of Rent Increase was properly served on the tenant. I find that the landlord was notable to

sufficiently prove when and how the Notice was served nor confirm that it was received by the tenant.

With respect to the tenant's claim for over-paid rent, I find that the evidence confirmed that the tenant had been paying \$895.00 each month without any change or complaint from the landlord for ten months and apparently the landlord did not take issue with this for a substantial period of time.

Given the above, I accept the tenant's testimony that he had never received a Notice of Rent Increase in March 2012.

Section 43(5) states, "*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*". Based on the Act, I find that the tenant is therefore entitled to be compensated in the amount of \$380.00 for additional rent collected from the tenant.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation totalling \$380.00 excessive rent collected not in compliance with the Act.

I hereby grant a monetary order to the tenant for the difference in the amount of \$380.00. This order must be served on the landlord and if unpaid may be enforced in Small Claims Court.

Conclusion

The tenant is successful in the application and is granted a Monetary Order for overpaid rent.

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: August 20, 2013

Residential Tenancy Branch