



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI MNDC FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on October 11, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a rent increase;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant D.C. attended the hearing on behalf of both Tenants and provided a solemn affirmation. The Landlord did not attend the hearing.

The Tenant D.C. testified that the Tenants' Application package, including the Notice of a Dispute Resolution Hearing, was served on the Landlords by registered mail on October 15, 2016. In support, he submitted copies of the registered mail packages, date-stamped October 15, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlords are deemed to have received the Tenants' Application package on October 20, 2016.

The Tenant D.C. was provided the opportunity to present the Tenants' evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Background

The Tenant D.C. provided a copy of the written tenancy agreement between the parties. It confirms the month-to-month tenancy began on or about February 29, 2016. According to the tenancy agreement, rent in the amount of \$850.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$425.00 at the beginning of the tenancy. The tenancy agreement confirms the rental unit was intended for use by two adult occupants. However, the tenancy agreement does not set out an amount by which rent will increase for more than two occupants.

The Tenant D.C. testified that on September 16, 2016, the Landlord handed him a letter dated September 22, 2016. A copy of the letter was submitted with the Tenants' documentary evidence. The letter stated:

Your suite was rented to two people. I now find out that there has been four people occupying the suite. That explains why my water bill has been higher than normally.

I am prepared to accept the change in occupancy but the rent would need to reflect the change.

Can you please issue your next post dated cheques, starting with October 1st, 2016 for \$1,000.00.

Should you want to discuss this change, feel free to contact me.

[Reproduced as written.]

The Tenant D.C. testified that he tried to discuss the letter with the Landlords and explain that his sons do not live with him. The Tenant D.C. was told the tenancy would end if he did not pay the increased amount. Accordingly, the Tenants paid rent in the amount of \$1,000.00 per month in October and November 2016 to protect the tenancy. The Tenant D.C. has asked to be reimbursed the \$300.00 overpayment, plus the \$100.00 filing fee.

Analysis

Section 40 of the *Act* states:

“rent increase” does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) [*requirements for tenancy agreements: additional occupants*].

Section 13(2)(f)(iv) states:

A tenancy agreement must...set out all the following:

...

- (f) the agreed terms in respect of the following:

...

- (iv) the amount of rent payable for a specific period, and, if the rent varies with the number of occupants, the amount by which it varies

Applied to this case, the increase set out in the Landlords' letter to the Tenants is not authorized under the tenancy agreement. As a result, Part 3 of the *Act* applies. However, Part 3 of the *Act* does not permit landlords to arbitrarily increase rent based on the number of occupants.

In this case, the Tenant D.C. provided unchallenged oral testimony and documentary evidence. He testified that he received a notice of rent increase based on the number of occupants in the rental unit, and that this increase was not contained in the tenancy agreement. I find that the tenancy agreement does not authorize an increase in rent based on the number of occupants. The Landlord's proposed increase is arbitrary and is not permitted under Part 3 of the *Act*. Accordingly, I order that rent will continue to be \$850.00 per month until otherwise increased in accordance with the *Act*.

In light of my conclusions above, I find that the Tenants are entitled to be reimbursed for the overpayment of rent for the months of October and November 2016 in the amount of \$300.00. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

In light of the above, and pursuant to section 67 of the *Act*, I find the Tenants have demonstrated an entitlement to \$400.00, which consists of reimbursement of a \$300.00 overpayment of rent plus \$100.00 as recovery of the filing fee. I order that this amount may be deducted from a future rent payment.

The Landlords are encouraged to review sections 40-43 of the Act, which deal with allowable rent increases.

Conclusion

I order that rent will continue to be \$850.00 per month until increased in accordance with the *Act*.

I order that the Tenants are entitled to deduct \$400.00 from a future rent payment.

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: November 30, 2016

Residential Tenancy Branch