



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); for the Landlord to comply with the Act; and to recover the filing fee from the Landlord.

The Tenant and an agent for the corporate Landlord appeared for the hearing and provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application and the Tenant's email evidence. The Landlord's agent also confirmed that he had not provided any evidence prior to this hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

Is the Tenant entitled to the monetary compensation for an illegal rent increase?

Background and Evidence

The parties agreed that this tenancy started on September 1, 2014 for a fixed term of one year which then continued on a month to month basis thereafter. Rent under the written tenancy agreement started off at \$1,525.00 payable by the Tenant the first day of each month. The parties confirmed that the tenancy ended on March 31, 2017.

The Tenant testified that his rent for this tenancy was being debited from his bank account. In November 2016, the Tenant noticed that the rent amount being debited by had increased from \$1,525.00 to \$1,569.00.

The Tenant contacted the Landlord's agent about this by email on November 8, 2016. The Landlord's agent replied stating that the Tenant had been sent a notice of rent

increase for the increased amount of rent by mail on July 13, 2017 effective for November 1, 2016.

The Tenant testified that the Landlord attached to the reply email a copy of the notice of rent increase and a cover letter explaining the notice of rent increase that was allegedly sent by mail. The notice of rent increase and the cover letter was not provided into evidence by the parties. However, the Tenant testified that the cover letter detailed a typo in the unit number of the rental unit address and was likely sent to the wrong address, although the notice of rent increase detailed the correct address.

The Tenant submits that he did not receive the notice of rent increase in July 2016 and only received it when the Landlord provided it to him in the attachment to the November 8, 2016 email. Therefore, the Tenant claims for the increased amount of rent he paid for November and December 2016 and for January and February 2017 for a total of \$176.00. The Tenant explained that this accounts for the months the notice of rent increase was not effective, since he only got it in November 2016 by email.

The Landlord's agent confirmed the Tenant's version of the events but testified that the Tenant was served with the notice of rent increase by mail to the correct rental unit address on July 13, 2016. The Landlord's agent submitted that he had used an approved method of service under the Act and that the notice of rent increase was deemed served five days later. The Landlord's agent confirmed the typo in the rental unit address on the cover letter but insisted that it was mailed to the correct rental unit address as it was not returned back to the Landlord.

Analysis

I have carefully considered the evidence of both parties and make findings on the balance of probabilities as follows. When a landlord serves a tenant with a document, the landlord bears the burden to prove service of that document. In this case, while the Landlord relies on regular mail as a method of service approved by Section 88(c) of the Act, the Landlord still needs to prove service of the notice of rent increase.

The courts have determined that the deeming provisions of the Act are rebuttable. I find that on the balance of probabilities, it is plausible that based on the error in the rental unit address on the cover letter that was sent to the Tenant, it could have been just as likely sent to an incorrect address. I find the Landlord's evidence that the documents were not returned back to him is insufficient to show that they were actually sent to the correct address. This could have been proven if the Landlord has used registered mail

which is also another method approved by Section 88(c) of the Act; this method would have allowed for the tracking of the documents and would have served to be convincing supporting evidence of service.

Based on the foregoing, I find the Landlord has failed to provide sufficient evidence to prove the Tenant was served with the notice of rent increase in July 2016. The undisputed evidence before me is that the Tenant did receive the notice of rent increase in November 2016. Therefore, the Tenant would not have been obligated to pay the increase of \$1,569.00 until March 1, 2017.

As a result, I award the Tenant the overpayment of rent he made for the four months of this tenancy totaling \$176.000. As the Tenant had to make this Application to recover the relief granted, I also award the Tenant \$100.00 to recover his filing fee pursuant to Section 72(1) of the Act.

The Tenant is issued with a Monetary Order for a total of \$276.00. This order must be served on the Landlord and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the order are attached to the Tenant's copy of this Decision.

Conclusion

The Tenant is granted a Monetary Order for \$276.00 for overpayment of rent and recovery of the filing fee. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 02, 2017

Residential Tenancy Branch