



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend this 25-minute hearing although the teleconference connection remained open throughout. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

Both tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – service of the Notice of Dispute Resolution Hearing

The tenants testified that on August 19, 2022, they served the landlord with the Notice of Dispute Resolution Hearing package via registered mail to the rental unit where they used to live. The tracking number for the mailing is recorded on the cover page of this decision.

The tenants testified that the landlord did not provide them with an address for service on their tenancy agreement. They had the landlord's telephone number where messages could be left, and that was it. The tenants note that paragraphs 16 and 19 of the tenancy agreement indicate that the landlord will collect the rent between 5 and 7

p.m. on the first day of the month and that the landlord will inspect the inside of the home once per month while collecting rent. This happened regularly on a monthly basis.

Based on the undisputed testimony of the tenants, I deem the landlord to be successfully served with the Notice of Dispute Resolution Hearing package on August 24, 2022, the fifth day after it was sent to the rental unit address, in accordance with sections 71 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to compensation for overpayment of rent?
Can the tenants recover the filing fee?

Background and Evidence

The tenants testified that the tenancy began on March 1, 2012 with rent set at \$800.00 per month, although the tenancy agreement states it is \$850.00 per month. On January 26, 2018, rent was sitting at \$966.00 per month and the landlord gave the tenants a form #RTB-7 [notice of rent increase] advising them he is raising the rent to \$1,005.00, effective June 1, 2018. After serving this form, the landlord verbally told them he wanted to raise it to \$1,200.00 per month instead of \$1,005.00 per month.

The tenants knew this was above the allowed limit of a rent increase, but they started paying the \$1,200.00 rent, effective June 1, 2018. Although they protested to the landlord, the tenants testified that the landlord was passive/aggressive with them and made threats to sell the unit or stop being their landlord if they didn't pay.

The tenants were given another rent increase on February 2, 2019, raising rent to \$1,400.00, effective June 1, 2019. The tenants also knew this was against the regulations, however they started paying it on June 1, 2019.

In February 2020, the landlord served a third form #RTB-7 notice of rent increase, raising the rent from \$1,400.00 to \$1,512.00. At this time, rent increases were frozen due to the pandemic. They paid a single payment at \$1,512.00, and ended the tenancy on July 31, 2020.

When I asked the tenants why they didn't follow the instructions on the Notice of Rent Increase form and contact the Residential Tenancy Branch if the rent increase was above the legal limit, the tenants responded saying they went along with it because it was a fight or flight situation. They made a mistake. They had a special needs son and

didn't want to upset the landlord. They confirm they did not file any application to dispute the rent increase at the Residential Tenancy Branch when the landlord served them with the first, second or third Notice of Rent Increase.

The tenants seek to recover the overpayment of rent in the sum of \$7,639.68.

Analysis

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

The tenants made a conscious choice to accept the increased rent back in 2018 when, despite serving them with a legal rent increase, the landlord verbally raised the rent from \$966.00 to \$1,200.00. The tenants were given the correct form which tells them what to do in situations where a landlord increases the rent higher than the allowable limit. They chose not to follow those instructions.

The tenants could have refused to accept the higher rent or challenged the attempted increase by filing an application for dispute resolution with the Residential Tenancy Branch. They did neither. I note that on each occasion, the landlord gave the tenants a full 3 months notice of the rent increase which I find would be a reasonable time frame for the tenant to make enquiries or do research to determine if the rent increase was compliant with the legislation.

The tenants in this case continued to undermine their own position by continuing to accept the first, second and third rent increases given to them in 2018, 2019 and 2020. Instead of challenging the increases the tenants accepted them and agreed to make the higher payments. I find the tenants have established a pattern of failing to enforce their right to challenge the rent increases and the legal doctrine of Estoppel has to apply.

For the tenants to concede paying the increased rent and then seek to have the increased rent returned to them after the tenancy ended would be unjust. I find that the tenants considered the rate of rent they paid during the tenancy to be fair, as they chose to continue renting at the rate set by the landlord instead of challenging it before the Residential Tenancy Branch or ending the tenancy.

Based on the legal doctrine of Estoppel, I dismiss the tenants' application.

As the tenants' application was not successful, the tenants are not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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: April 25, 2023

Residential Tenancy Branch