



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution for a Monetary Order for compensation for loss under the Act. Specifically, the Tenants alleged the Landlord benefitted from illegal rent increases and the Tenant sought reimbursement of the amounts paid in excess of the allowable amounts.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenants introduced in evidence a copy of the Residential Tenancy Agreement signed January 2, 1999. The tenancy began on January 2, 1999 and rent was payable in the amount of \$1,150.00 on the last day of the month. The Tenants paid a security deposit in the amount of \$575.00.

The Tenant testified that in 15 years of tenancy, they only received three written documents including:

1. the Residential Tenancy Agreement;

2. a RTB-7, Notice of Rent Increase, dated April 29, 2014 and delivered May 3, 2014 noting an increase of rent from \$1,300.00 to \$1,328.06; and,
3. a move out Condition Inspection Report dated June 1, 2014.

The evidence as to the history of rent increases is as follows.

Beginning of Tenancy

The original rent, when the Tenants moved into the rental unit in January 1999 was \$1,150.00.

June 2006 Rent Increase

The Tenants testified that in June of 2006, after seven and a half years of tenancy with no increase, the Landlord requested an additional \$50.00 per month such that the rent increased to \$1,200.00.

As to her reasons for requesting this increase, the Tenants testified that the Landlord said that her costs had increased and that as she had not sought an increase for many years, she felt it was acceptable to request more than the legislated amount.

The Landlord testified that the Tenants agreed to this request and although they did not agree to this increase in writing they simply began paying the increased amount when asked.

When asked why they did not address their concerns about the 2006 rent increase with the Landlord prior to the present application, the Tenant's responded that after seven and a half years of tenancy, they felt the \$50.00 was "reasonable".

The Tenants testified that all communication between themselves and the Landlord occurred via email and that they expected some kind of documentation from the Landlord about the rental increases in 2006. There was no evidence that the Tenants conveyed this expectation to the Landlord; rather, the Tenants simply paid the additional \$50.00 per month.

The Landlord testified that she contacted the Tenants in 2006 to give them notice of the rent increase. She stated that she told them it would commence in three months and that it would be for \$47.00. She testified that she believed \$47.00 was the permitted amount of rent increase pursuant to the *Residential Tenancy Act*. She stated that she spoke to L.D.K. who confirmed that the amount was agreeable and that she would send new cheques. Approximately three days later the Landlord received new cheques in the amount of \$1,200.00, and that the cheques were written out such that the increased amount was paid the following month.

The Landlord testified that she spoke to L.D.K. about the overpayment of \$3.00 and the fact that the increased amount started three months early; according to the Landlord, L.D.K. confirmed she was fine with paying the amount, and paying it earlier than requested.

The Landlord stated that her computer hard drive became inoperable at some point after 2006, but that in any case she recalls sending the Tenants an email to thank them for the new cheques.

In reply to the Landlord's testimony, L.D.K. testified that the Landlord did not explain that the 2006 increase would take effect in 3 months and L.D.K. stated that the Landlord simply asked for the sum of \$1,200.00;

August 2009 Rent Increase

The Tenants testified that in August of 2009, the Landlord called the Tenants and advised them that she was out of post-dated cheques. She also stated that she wished to raise the rent by \$100.00 per month such that the rent would increase to \$1,300.00.

When asked why they did not raised their concerns about the \$100.00 increase in 2009 directly with the Landlord at the time, the Tenant responded that they believed that after 10 years of living in the rental unit, that a \$100.00 increase was "totally reasonable".

The Landlord testified that in June of 2009, she again called L.D.K. to discuss her desire to raise the rent. At this time she says she told L.D.K. that she needed to raise the rent because of increased property taxes and utilities. The Landlord testified that L.D.K. originally asked how much the Landlord needed and asked if \$100.00 would be enough. According to the Landlord, while she was agreeable to the \$100.00 offer, she suggested to L.D.K. that she speak to L.A.K. about this amount to confirm his agreement as well.

The Landlord testified that she then received new cheques from the Tenants in the amount of \$1,300.00 per month commencing September 1, 2013.

The Landlord further testified that she spoke with L.A.K. about the increase at some point in 2010. She stated that she was at the rental unit planting trees when she and L.A.K. had a conversation about the amount of rent L.A.K.'s daughter was paying in a larger city in British Columbia. The Landlord testified that she said something to the effect of "\$1,300.00 for this rental seems pretty reasonable" to which L.A.K. acknowledged his agreement.

In reply to the Landlord's testimony, L.A.K. testified that the Landlord's allegations about a conversation in 2010 while she was planting a tree, never occurred; rather, he says he returned home and the trees had simply been planted in his absence.

April 29, 2014 Rent Increase

As noted above, on April 29, 2014, the Landlord issued a Notice of Rent Increase from \$1,300.00 to \$1,328.06. The Tenants vacated the rental unit as of May 31, 2014 and as such the final rent increase never took effect.

The Tenants testified that when they attended the Residential Tenancy Branch at the end of their tenancy, they did so to discuss concerns they had with the return of their security deposit. It was at this time they became aware that they may be entitled to claim reimbursement for the rental increases in 2006 and 2009 that were occasioned without the proper written notice. After consulting with the information available on the internet, the Tenants discovered that the 2006 and 2009 rental increases were problematic for the following reasons:

1. The notice of rent increase was not in the required form;
2. The Tenants were not provided the required three month's-notice;
3. The increase was over the legislated amount; and
4. The Landlord did not have the Tenant's written agreement, nor did she have an Order from the Director which would permit an increase over the legislated amount.

The Landlord stated that had the Tenants ever told her that they disagreed with the 2006 and 2009 increases that she would have corrected the amount. She submitted that it was not appropriate for the Tenants to raise this issue so many years later when they made no mention that they were unhappy with paying the amounts.

The Landlord confirmed that the Tenants were "absolutely fabulous" and that they did not have any disputes during their tenancy.

Additionally, the Landlord testified that she believed the agreement was reduced to writing when the Tenants provided the cheques in the increased amounts. Finally, the Landlord noted that had the rent been increased each year by the statutory amount, she would have been charging more by the time the tenancy ended.

Analysis

Rent increases are governed by Part 3 of the Act. Pursuant to section 41, a landlord must not increase rent except in accordance with this Part.

Section 42(2) provides that a Landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 42(3) provides that a notice of rent increase must be in the approved form.

Section 43 provides that 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.

Residential Tenancy Policy Guideline 37. Rent Increases provides that “payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount”.

In this case, the Tenants seek compensation for rent paid pursuant to rent increases which were not effected in accordance with the Act. Should the Tenants be successful, they would be entitled to claim compensation for rent paid since 2006, some 8 years ago.

The Tenants testified that they felt the 2006 and 2009 rent increases of \$50.00 and \$100.00 were reasonable. They did not apply to dispute the increases at the time as they acknowledged the Landlord had not raised the rent annually. I find as a fact that they communicated their agreement to the Landlord at the time she requested the increase, and at no time during the tenancy did they communicate to the Landlord that they believed the increases to be unacceptable.

It was reasonable for the Landlord proceed on the underlying assumption that the Tenants agreed to the rental increases in 2006 and 2009. Had the Tenants communicated that they disputed the requested increases in 2006 and 2009, the Landlord might have chosen to raise the rent on an annual basis to ensure that by 2014, she was receiving an acceptable amount of rent to meet her expenses as a property owner.

The maximum allowable rent increases for each year are prescribed by the Residential Tenancy Act Regulations and are set out in the table below. As noted in the table, had the Landlord increased the rent annually to the maximum allowable amount, the rent would have increased to \$1,562.45 by 2014.

| Year | Maximum Allowable Rent Increase | Amount of rent had Landlord increased rent annually from 2006 in accordance with the maximum allowable amount |
|-------------|--|--|
| 2006 | 4.0% | \$1,150.00 + \$46.00 = \$1,196.00 |
| 2007 | 4.0% | \$1,196.00 + \$47.84 = \$1,243.84 |
| 2008 | 3.7% | \$1,243.84 + \$46.02 = \$1,289.86 |
| 2009 | 3.7% | \$1,289.86 + \$47.72 = \$1,337.58 |

| | | |
|------|------|-------------------------------------|
| 2010 | 3.2% | $\$1,337.58 + \$42.80 = \$1,380.38$ |
| 2011 | 2.3% | $\$1,380.38 + \$31.75 = \$1,412.13$ |
| 2012 | 4.3% | $\$1,412.13 + \$60.72 = \$1,472.85$ |
| 2013 | 3.8% | $\$1,472.85 + \$55.97 = \$1,528.82$ |
| 2014 | 2.2% | $\$1,528.82 + \$33.63 = \$1,562.45$ |

Estoppel by Convention

In a recent Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

59 After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

- (1) The Tenants, having agreed to the rental increases in 2006 and 2009, and failing to raise any concerns with the increase or dispute the amounts, created a mutual assumption upon which the Landlord relied.
- (2) The Landlord relied on this shared assumption, and did not pursue annual rent increases.
- (3) It would be unjust and unfair to allow the Tenants to resile or depart from the common assumption that the 2006 and 2009 rent increases were mutually agreeable as the Landlord, having relied on the Tenants agreement with the 2006 and 2009 rent

increases, did not pursue annual rent increases; based on the maximum allowable rent increases applicable at the time, such annual rent increases would have resulted in the Tenants paying more than the agreed upon rent.

Applying the principle of estoppel by convention, I find that the Tenants are estopped from claiming compensation for the 2006 and 2009 rent increases. The Tenants application is dismissed.

Conclusion

The Tenants, having agreed to the 2006 and 2009 rent increases, created a common assumption upon which the Landlord relied. The Tenants are estopped from claiming compensation for the rent increases and their application is dismissed.

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 06, 2014

Residential Tenancy Branch

