



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: DRI FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Notice of Rent Increase that was not compliant with the Residential Tenancy Act, (the Act) in regards to the percentage allowed by regulation and an order to be reimbursed for the cost of filing the application for dispute resolution. Despite being served in person and by registered mail sent on November 20, 2008, the respondent landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to cancel a Notice of Rent Increase in excess of that permitted under the Residential Tenancy Regulation, (the Regulation).

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord had issued a notice that contravened Part 3 of the Act and Part 4 of the Regulation.
- Whether the landlord had collected additional rent from the tenant pursuant to a notice that did not comply with the Act or Regulation.

Background and Evidence

The tenant submitted into evidence a copy of a Notice from the landlord dated July 31, 2008, purporting to be a notice to increase the rent from \$450.00 to \$660.00 effective November 1, 2008, copies of correspondence and proof of service to the landlord.

The tenant testified that the landlord imposed an increase of \$210.00 thereby illegally increasing the rent from \$450.00 per month to \$660.00 per month starting in November 2008. The tenant testified that, on the advice of an information officer at the Residential Tenancy Branch, the higher rent was not paid pending the outcome of the hearing and the tenant had continued to pay the regular rent of \$450.00 per month.

Analysis

The Act governs when, how and how much a Landlord may increase the rent. In regards to rent increases, section 41 states that a landlord must not increase rent *except in accordance with Part 3 of the Act* which includes sections 40, 41, 42, and 43.

Section 42 (2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. The Notice in evidence, issued by the landlord did comply with this section. In addition, section 42(3) states that a notice of a rent increase must be in the approved form and I find that the landlord's notice had also complied with this section. However, section 43(1), specifies that a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations or
- ordered by the director on an application under subsection (3) or
- agreed to by the tenant in writing.

The regulations provide that, for the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

PERCENTAGE AMOUNT = INFLATION RATE + 2%.

I find that the amount of increase imposed by the landlord in this instance had clearly exceeded the statutory limitation and therefore the Notice issued by the landlord is invalid.

In regards to whether or not a flawed Notice issued by a landlord, as in this case, should then be amended by the Dispute Resolution Officer to reflect the allowed percentage of increase that is specified in the regulations, I find that this would be beyond the scope of my function and furthermore would be contrary to the intent of the Act.

For example, in situations where the tenant has paid the illegal increase, section 45(5) of the Act states that, *“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.”* I must point out that it is clear that the Act does not contemplate that a tenant would ever be required to pay an adjusted increase of rent to reflect the limited percentage that could have been legally implemented by the landlord via a fully compliant notice. In fact the tenant would not be required to pay any portion of the wrongful increase. The Act specifically permits a tenant to deduct the total increase, not merely just the portion charged in excess of the legal limitation.

Moreover, section 43(3) of the Act and 23(1) of the Regulation grants any landlord seeking to increase the rent beyond the limited percentage an option to file an application for dispute resolution to obtain an order to accomplish this purpose. I note that the landlord in this situation did not submit an application seeking an order to increase rent in an amount exceeding the usual percentage allowed.

Given the above, I am not prepared to calculate an amendment on the landlord's behalf to change the percentage of increase so as to make to the Notice of Rent Increase compliant with the regulation. Therefore, I find that the Notice of Rent Increase dated July 31, 2008, must be cancelled in total. I order that the rent will remain at \$450.00 per month, unless and until a compliant Notice of Rent Increase is issued and served on the tenant by the landlord.

Conclusion

Based on the testimony, evidence and provisions of the Act and regulation, I hereby order that the Notice of Rent Increase dated July 31, 2008 issued to the tenant by the landlord is permanently cancelled and of no force nor effect. I find that the tenant is entitled to reimbursement for the \$50.00 fee paid by the tenant for this application and I

order that the tenant may reduce the next rental payment owed to the landlord in the amount of \$50.00 as a one-time abatement to recoup the cost of filing.

Dated: January, 2009