



Dispute Resolution Services

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

Decision

Dispute Codes: DRI, OLC, FF

Introduction

This hearing dealt with an application from the tenant to dispute an additional rent increase, an order for the landlord to comply with the Act, and recovery of the filing fee for this application. Both parties, including the agent for the landlord, participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the tenant is entitled to have the additional rent increase set aside, entitled to an order instructing the landlord to comply with the Act, and / or recovery of the filing fee.

Background and Evidence

Pursuant to a written residential tenancy agreement, this longstanding tenancy commenced in February 1995. Effective January 1, 2009 the monthly rent was \$775.00. It is my understanding that the agreement is silent on utilities, and over the years they have been included in the rent.

By way of issuing a Notice of Rent increase dated November 1, 2008, the landlord informed the tenant of a monthly rent increase in the amount of \$150.00, or approximately 19.35% effective February 1, 2009. Such an increase would bring the monthly rent to \$925.00. The tenant disputes the amount of this increase and, instead of paying \$925.00 for rent in February and March 2009, he paid \$802.75 for each month and applied for dispute resolution to resolve the matter.

The landlord notes that the cost of utilities has increased significantly since the start of the tenancy. He further states that as rent increases have not routinely been introduced in each and every year of this tenancy, it is not unreasonable to introduce an increase now which compensates for costs during the years when no increase was sought.

Analysis

The immediately relevant legislation in the circumstances of this dispute is set out in Part 3 of the Act: **What Rent Increases Are Allowed**. Specifically, the sections included in this Part are as follows: section 40 **Meaning of “rent increase,”** section 41 **Rent increases;** section 42 **Timing and notice of rent increases,** and section 43 **Amount of rent increase**. Pursuant to the Regulations to the Residential Tenancy Act the current amount of rent increase allowable is 3.7% once every 12 months.

Residential Tenancy Policy Guideline #37 also addresses **Rent Increases**.

All of the above resources can be accessed at the website: www.rto.gov.bc.ca/

As the tenant's rent effective January 1, 2009 was \$775.00 per month, the allowable rent increase of 3.7% is \$28.67. Effective February 1, 2009, therefore, without applying for dispute resolution, pursuant to the 3 month Notice of Rent increase issued by the landlord, the monthly rent may be increased from \$775.00 by only \$28.67 to \$803.67.

There is no provision in the relevant legislation which permits the landlord to impose a rent increase over and above that allowed in the Regulations, in order to compensate for a failure to introduce allowable rent increases every 12 months during the term of a tenancy.

As the outcome of this hearing favours the tenant / applicant, I order that he may withhold the better part of the \$50.00 filing fee from the next regular payment of monthly

rent. Specifically, the amount of the filing fee that may be withheld is offset by the shortfall in his payment of rent for February and March in the total amount of \$1.84 $[(\$803.67 - \$802.75) \times 2]$. I therefore order that the tenant may withhold \$48.16 from the next regular payment of monthly rent, leaving rent due for the month of April as \$775.51 $(\$803.67 - \$48.16)$. Thereafter, until further notice or by way of mutual agreement between the parties, the monthly rent is \$803.67.

Conclusion

I hereby set aside the landlord's notice of rent increase shown as effective February 1, 2009 in the amount of \$150.00, which is approximately 19.35% of the pre-existing rent.

I hereby order the landlord to comply with the Act and limit the rent increase to \$28.67 per month which reflects the 3.7% increase permitted by the Regulations to the Residential Tenancy Act.

The tenant may withhold \$48.16 from the next regular payment of rent which, effective February 1, 2009 is \$803.67, and make payment of \$755.51.

By way of his own application for dispute resolution, the landlord may seek an order permitting a rent increase above the amount provided for in the legislation.

DATE: March 13, 2009

Dispute Resolution Officer