



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Additional rent increase

Introduction

This matter dealt with an application by the landlord for an additional rent increase.

Service of the hearing documents was done in accordance with s. 89 of the Act. They were hand delivered to the tenants on March 10, 2009. The tenants confirmed they have received them. A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the landlord entitled to an additional rent increase?

Background and Evidence

This tenancy started in May, 2000. At that time the rent was \$800.00 per month. Approximately six years ago the rent was increased to \$850.00 and there was another rent increase approximately four years ago to \$875.00.

The landlord is claiming an additional rent increase because he claims his costs have risen and other properties in the area have a higher rent. The landlord claims that he has had to put in a new furnace, hot water tank and new windows. He also claims that his property tax and sewer costs have risen. When questioned, the landlord was unsure what his mortgage payments are but states that the house has increased in value and the tenancies do not

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cover the cost of his outgoings. The landlord rents out the lower half of the home to other tenants and the rent for this portion of the house is \$850.00. In total the landlord receives \$1,700.00 in rent payments for the entire house. The landlord claims that the tenants agreed to pay an increase in rent to \$1,100.00 per month.

The tenants dispute the additional rent increase and state that the furnace, hot water tank and windows were very old and all needed to be replaced. The tenants claim that the landlord took down the old single garage and built a new one to replace it. This is why the landlords' property taxes have increased. The tenants claim that they had use of the old garage as storage but this has now been taken away from them. The new garage has also taken up some of the garden space they previously used and had upgraded. The tenants claim that they have spent a considerable amount of time and money on the yard and the house and have carried out many upgrades. They feel this has increased the rental value of the property but don't feel that they should have to pay a larger increase in rent because of this.

The tenants agree that they did tentatively agree to increase their rent to \$1,100.00 but did not sign anything and felt that this agreement was made under duress from the pressure the landlord was putting on them for an increase. Other factors on the agreement were wrong such as the notice period was incorrect (only 2 months Notice given), some items included on the new agreement should not have been included and the tenants' state that the landlord had signed his wife's name on the agreement without her knowledge.

The landlord has provided documents from internet sources showing similar properties in the area and the higher rent that is charged for these properties. The tenants dispute these documents as the properties are not comparable or in the local area to their rental property. The tenants have provided letters from neighbours living in the local area to determine the amount of rent paid for similar properties.

Other issues have been raised by both parties but as these are not directly connected to this dispute they do not form part of my decision.

Analysis

The Residential Tenancy Act s. 32 states that:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord has an obligation under the Act to replace the furnace, hot water tank and windows in order to comply with this section of the Act as these items are essential to a tenant's use of the property.

I find that the landlord decided to build a new garage and restrict the tenant's use of this for storage as they had previously had in the old garage. By building this new garage the tenants have also lost part of the garden space they previously enjoyed. Therefore, the landlord has taken away part of the tenants use of property agreed to or implied under the tenancy agreement. The landlord has incurred additional property tax due to the addition of a larger garage and the tenants should not have to pay for this.

I find that the landlord has not provided sufficient evidence that similar properties in the local area are rented for a significantly higher amount. The tenants have provided evidence that their rent is comparable with rent for similar properties with the same facilities in the same area.



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The landlord has not increased the tenants rent in the last four years by the amount allowed under the *Act*. Therefore, I find that he may increase the tenants rent by the amount of 3.7% only for this year. The landlord has not given the tenant's the required three months Notice of a rent increase and must do so before any rent increase takes place, pursuant to s. 42(2) of the *Act*.

Conclusion

I find that the landlord has not provided sufficient evidence to support his claim for an additional rent increase above the allowed 3.7% for 2009. Due to other factors in the evidence presented I find that the landlord has also restricted the tenant's use of areas of the property that they previously enjoyed.

Due to the evidence presented at today's hearing I dismiss the landlords' application for an additional rent increase 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: June 05, 2009.

Dispute Resolution Officer