

## **Decision**

### **Dispute Codes:**

DRI            Dispute an additional rent increase

### **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 the tenant believed was not compliant with the Residential Tenancy Act, (the Act) in regards to the date of the last rent increase which had occurred less than one year prior. Despite the landlord's agent being served in person on December 14, 2009, the respondent landlord did not appear.

### **Issue(s) to be Decided**

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 collected additional rent from the tenant pursuant to a previous increase 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 November 16, 2009, purporting to increase the rent from \$550.00 to \$565.00 effective March 1, 2010. No tenancy agreement was submitted into evidence. According to the tenant, no past Notice of Rent Increase was ever issued. However the landlord had evidently given the tenant a verbal rent increase based on the number of occupants.

### **Preliminary Issue**

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 43 of the Act states that a landlord may impose a rent increase only up to the amount that:

- was calculated in accordance with the regulations;
- was ordered by the director pursuant to an application for additional rent increase;
- or was agreed to by the tenant in writing.

Section 43(2) states that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the above.

The notice issued by the landlord appears to comply with the Act. However, the reason given by the tenant in alleging that the Notice of Increased Rent is not in compliance, is that in June 2009, the landlord had allegedly verbally imposed an increase in rent from that originally agreed to when the tenancy agreement was signed by the parties. This was apparently based on the tenant's wish to add an additional occupant.

Under the Act, a landlord is permitted to make amount of rent contingent upon the number of occupants, provided that this is documented as a specific term in the written tenancy agreement. According to the tenant, the written tenancy agreement signed by the parties did not contain a specific term allowing the landlord to charge more rent depending on the number of occupants.

However, as no copy of the agreement was submitted into evidence, there was no way to determine whether or not a previous illegal rent increase was imposed contrary to the Act or whether the altered rent was based on an allowable term in the tenancy agreement stating that the amount rent charged was to be contingent upon the number of occupants, which the Act acknowledges as a valid term under section 13(2)(iv).

### **Conclusion**

Based on the testimony, I find that this hearing could not proceed in the absence of the necessary evidence and I hereby dismiss the application with leave to reapply.

Dated: January 2010

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Dispute Resolution Officer