

DECISION

Dispute Codes DRI FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute an additional rent increase and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel a notice of rent increase in accordance with Section 43 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the tenancy agreement was effective May 1, 2008. Rent is currently payable in the amount of \$650.00 on the first of each month and the Tenant paid a security deposit of \$325.00 approximately April 15, 2008.

The Tenant testified that she was issued a three month notice of rent increase on July 28, 2010, for an increase amount of \$70.00. She states that this amount is greater than the 3.2% allowable increase set forth in the *Residential Tenancy Regulation*.

The Landlord testified that he has only managed this building on behalf of the Landlord since July 1, 2010. He confirmed issuing the \$70.00 notice of rent increase as instructed by the Landlord and is of the position that the Landlord is entitled to this increased amount because the current rent is below market value, the unit requires repairs in the next year, and another unit in the building has since been rented at a higher amount.

Analysis

The documentary evidence I have considered in this decision is: a copy of the letter issued by the Landlord dated July 28, 2010, a copy of the Notice of Rent Increase dated July 28, 2010, and a copy of an e-mail issued by the Tenant to the Landlord on August 2, 2010, informing the Landlord that the rent increase did not comply with the Act or Regulation.

Sections 40, 41, 42, and 43 of the *Residential Tenancy Act* provide how, when, and amounts a Landlord may increase a tenant's rent. Copies of these sections of the Act are included at the end of this decision for your reference.

In this case the evidence supports that the Landlord issued a Notice of Rent Increase for an amount that does not comply with the Act or Regulations therefore the Notice is Void and of no force of effect. The Landlord is at liberty to issue a new Notice of Rent Increase with a new effective date for an amount that complies with the regulated amount or to make application for dispute resolution to seek an Order allowing an additional rent increase.

The Tenant has been successful with her application, therefore I award recovery of the \$50.00 filing fee from the Landlord.

Conclusion

The Notice of Rent Increase dated July 28, 2010, is HEREBY void and of no force or effect.

The Tenant may deduct the one time award of \$50.00 (the filing fee) from her future rent.

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: October 12, 2010.

Dispute Resolution Officer

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) 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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) 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.