



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This matter dealt with an application by the Tenants to dispute an additional rent increase, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2012 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does a rent increase comply with the Act and Regulations?
2. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in April of 2010. At the beginning of the tenancy, rent was \$550.00 per month due in advance on the 1st day of each month. On February 2, 2012, the Landlord's agent served the Tenants with a Notice of Rent Increase dated February 2, 2012. This Notice provided for a rent increase of \$50.00 to take effect on March 1, 2012. The Landlord said the Tenants advised him that this Notice did not comply with the Act so on April 26, 2012, the Landlord's agent served the Tenants with another Notice of Rent Increase dated March 31, 2012. This Notice provided for a rent increase of \$50.00 to take effect on August 1, 2012.

On or about August 10, 2012, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2012. This Notice to End Tenancy stated that the amount of \$600.00 that was due on August 1, 2012 was unpaid and that the Landlord would cancel the Notice upon the payment of \$520.00 within 5 days. The Parties agree, however that on August 2, 2012, the Tenants paid \$550.00.

Analysis

Section 43 of the Act says "*a Landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application by a Landlord for an additional rent increase or by agreement in writing of*

the parties.” Section 42(2) of the Act says that “a Landlord must give a tenant a notice of rent increase at least three months before the effective date of the increase.”

RTB Policy Guideline #37 at p. 14 says that where a Landlord issues a Notice of Rent Increase that does not comply with the Legislation, it does not result in an increased rent and the Landlord must re-issue a new Notice and give the Tenants the requisite 3 months notice before the increase can take effect.

I find that the Notices of Rent Increase dated February 2, 2012 and March 31, 2012 are not effective Notices because they purport to increase the rent by an amount greater than that permitted by the Regulations. In particular, the Landlord sought to impose a rent increase of \$50.00 when the authorized rent increase **for 2012** is 4.3% (or in this case \$23.65). Consequently, I find that the Tenants were not required to pay the rent increase and the rent continues to be \$550.00 per month until such time as it is increased in one of the ways authorized under s. 43 of the Act (set out above). As a further consequence, I find that there are no rent arrears to justify the grounds alleged on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2012 and it is cancelled.

As the Tenants have been successful in this matter, they are entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding and I Order pursuant to s. 72(2) of the Act that they may deduct this amount from their next rent payment when it is due and payable.

Conclusion

The Tenants' application is granted. 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: September 19, 2012.

Residential Tenancy Branch